

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)
IN RE: DEALER MANAGEMENT) MDL NO. 2817
SYSTEMS ANTITRUST)
LITIGATION,) CASE NO. 18 C 864
)

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN

Highly Confidential - Attorneys' Eyes Only

January 16, 2019

VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN,
produced as a witness at the instance of the
PLAINTIFF(S), and duly sworn, was taken in the
above-styled and numbered cause on the 16th day of
January, 2019, from 9:30 a.m. to 2:56 p.m., via
telephone, before Shauna L. Beach, RDR, CRR, CSR in and
for the State of Texas, reported by machine shorthand,
at the law offices of Gibbs & Bruns, LLP, 1100
Louisiana, Suite 5300, Houston, Texas 77002, pursuant to
the Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. We are on the record at 9:30 a.m. on January 16th, 2019. This is the video recorded deposition of Mr. Robert Brockman in the matter of In Re: Dealer Management Systems Antitrust Litigation in the United States District Court for the Northern District of Illinois in the Eastern Division. This deposition is being held at Gibbs & Bruns, LLP, located at 1100 Louisiana Street, Suite 5300, in Houston, Texas 77002.

My name is Ben Harwood, and I'm the videographer present on behalf of Veritext. The court reporter is Shauna Beach, also present on behalf of Veritext.

Will counsel please state their appearance and firm affiliation for the record.

MR. NEMELKA: My name is Mike Nemelka with the law firm of Kellogg Hansen Todd Figel & Frederick. I'm here on behalf of Authenticom, Cox Automotive and its named plaintiff subsidiaries, MDSC, Autoloop as a representative of the vendor class. And with me today is my colleague, Joe Long.

MS. WEDGWORTH: Peggy Wedgworth, Milberg Tadler Phillips Grossman, on behalf of the dealership class plaintiffs.

1 MR. HUGHES: John Hughes, Milberg Tadler
2 Phillips Grossman on behalf of dealership class
3 plaintiffs.

4 MS. GULLEY: Andi Gulley, Gibbs & Bruns,
5 for the witness.

6 MR. WILKINSON: Brice Wilkinson, Gibbs &
7 Bruns.

8 MR. CHERRY: Scott Cherry, general counsel
9 for Reynolds and Reynolds.

10 MR. COHEN: Michael Cohen, Sheppard Mullin,
11 for defendant the Reynolds and Reynolds Company and the
12 witness, Mr. Brockman.

13 MR. RYAN: Mark Ryan from Mayer Brown on
14 behalf of CDK Global.

15 THE VIDEOGRAPHER: Will the court reporter
16 please swear in the witness and we may proceed.

17 ROBERT BROCKMAN,
18 having been first duly sworn, testified as follows:

19 EXAMINATION

20 BY MR. NEMELKA:

21 Q. Good morning, Mr. Brockman. My name is Mike
22 Nemelka. And it's my opportunity to ask you some
23 questions today. Could you please state your full name
24 for the record.

25 A. It's Robert Theron Brockman.

1 Q. And where do you live?

2 A. Houston.

3 Q. And what is your address?

4 A. 333 West Friar Tuck Lane, Houston 77024.

5 Q. Do you own property anywhere else?

6 MS. GULLEY: Objection; form.

7 A. My wife and I own a townhouse that our son
8 lives in. It's 1731 Sunset.

9 Q. (By Mr. Nemelka) Do you own property in any
10 other states besides Texas?

11 MS. GULLEY: Objection; form.

12 A. No.

13 Q. (By Mr. Nemelka) Does any entity that you have
14 control over own property anywhere else?

15 MS. GULLEY: Objection; form.

16 A. Reynolds and Reynolds owns two locations in
17 Ohio. One is the Reynolds and Reynolds main
18 headquarters, and the other one is a forms manufacturing
19 plant.

20 Q. (By Mr. Nemelka) Do you own property in Aspen,
21 Colorado?

22 MS. GULLEY: Objection; form.

23 A. No.

24 Q. (By Mr. Nemelka) Do you have -- is there
25 property there that you visit from time to time?

1 MS. GULLEY: Objection; form.

2 A. Yes. There's property that I lease.

3 Q. (By Mr. Nemelka) That you lease. And who do
4 you lease it from?

5 MS. GULLEY: Objection; form.

6 A. It's called Mountain Queen, Inc.

7 Q. (By Mr. Nemelka) Do you have any ownership
8 interest in Mountain Queen, Inc.?

9 A. No.

10 Q. Okay. Did you prepare for your deposition
11 today?

12 A. Yes. I talked to my attorneys and reviewed
13 exhibits.

14 MS. GULLEY: Stop. Don't reveal the
15 subject of -- of attorney-client communication.

16 Q. (By Mr. Nemelka) And when did you prepare for
17 your deposition today?

18 A. Yesterday and the day before.

19 Q. And how long each day did you meet?

20 A. I'm sorry, I didn't keep track of the time.

21 Q. Was it a full day or half day?

22 A. It was probably in between.

23 Q. So three-fourths of the day, each day?

24 MS. GULLEY: Objection; form.

25 A. Yes.

1 Q. (By Mr. Nemelka) And with whom did you meet?

2 With whom did you meet?

3 A. Andi Gulley, Bryce, Scott Cherry, Michael.

4 Q. Were any attorneys for CDK present?

5 A. No.

6 Q. Was there anybody else from Reynolds present?

7 A. Yes. We had a -- one other attorney from
8 Reynolds.

9 Q. And who was that?

10 A. John -- I'm blanking on his last name. He
11 works for Scott Cherry.

12 Q. Okay. Any businesspeople from Reynolds present
13 when you prepared for the deposition?

14 A. No.

15 Q. Did you talk to anybody at Reynolds about your
16 deposition?

17 A. No. Other than the fact they know that I'm
18 here.

19 Q. Correct. Have you ever been deposed before?

20 A. Yes.

21 Q. How many times?

22 A. I don't recall the last time. Some time ago.

23 Q. Uh-huh. Well, so this isn't your first --
24 first rodeo, but just a few -- few ground rules to help
25 us get through the day efficiently. I'm going to do my

1 best not to talk over you, and if you will just let me
2 finish my question, and then I'll give you time to
3 answer it. So let's try not to talk over each other,
4 okay?

5 A. Yes.

6 Q. And please let me know if you don't understand
7 a question. If you answer, then we'll consider that you
8 understood the question. Okay?

9 A. Yes.

10 Q. Your counsel may object, but you still have to
11 answer the question unless your counsel instructs you
12 not to. And so even though your counsel may object,
13 unless he instructs you not to answer, please still
14 answer my questions, okay?

15 A. Yes.

16 Q. I understand that you may have been having
17 some -- you've had some health issues, and this is -- so
18 this is not an endurance test. If you need a break, you
19 can take one. Okay?

20 A. Yes.

21 Q. I would just ask that, before taking a break,
22 if you would -- if you would just finish answering a
23 question if a question is pending. Is that okay?

24 A. Yes.

25 Q. And -- but I'll still plan on trying to take a

1 break about every hour, for me as well as for you. But
2 if you need one in shorter intervals, that's fine.

3 Okay?

4 A. Thank you.

5 Q. Is there any reason that you can't provide
6 truthful testimony today?

7 A. No.

8 Q. Okay. You graduated from the University of
9 Florida, College of Business; correct?

10 A. Yes.

11 Q. Class of 1963?

12 A. Yes.

13 Q. And after graduating from the University of
14 Florida, you worked at the Ford Motor Company for about
15 two years; is that right?

16 A. Yes, a little short of two years.

17 Q. And then after Ford you joined IBM; is that
18 right?

19 A. Yes.

20 Q. And you were a successful salesperson there;
21 correct?

22 A. Yes.

23 Q. And I -- I think I understand that you sold
24 data processing services, in part; is that right?

25 A. Yes.

1 Q. And you were at IBM until about 1970, at which
2 point you left IBM and founded Universal Computer
3 Services, Inc.; is that right?

4 A. Yes.

5 Q. And you -- impressively -- taught yourself
6 computer programming around this time as well; is that
7 right?

8 A. Yes.

9 Q. And eventually, UCS developed and provided
10 dealership management system software to car
11 dealerships; is that right?

12 A. Yes.

13 Q. And, in fact, you were personally involved in
14 the programming of some of the dealership management
15 software that was sold -- licensed to dealers; is that
16 right?

17 A. Yes.

18 Q. And over the 1980s, 1990s and 2000s, you
19 continued to run UCS, right?

20 A. Yes.

21 Q. UCS served, primarily, large dealerships; is
22 that right?

23 A. Yes.

24 Q. And was the DNS that UCS marketed -- was it
25 called the PowerDNS?

1 A. Not originally, but later in its existence, it
2 was called Power.

3 Q. And then in August 2006, UCS acquired the
4 Reynolds and Reynolds Company; is that right?

5 A. It was a different date.

6 Q. Different date? It was -- oh, it was in 2006,
7 though?

8 A. Yes.

9 Q. What -- what was the month?

10 A. October.

11 Q. October. Thank you. And UCS paid 2.8 billion
12 in cash; is that right?

13 A. Yes.

14 Q. And prior to the deal, Reynolds was a public
15 company, right?

16 A. Yes.

17 Q. But with the acquisition, Reynolds became a
18 wholly-owned subsidiary of UCS; correct?

19 A. It's -- that's not the correct company. It's
20 called Dealer Computer Services.

21 Q. And Dealer Computer Services was the -- was the
22 holding company that owned Reynolds?

23 A. Yes.

24 Q. Okay. And the top-level holding company of --
25 of Reynolds is Universal Computer Systems Holdings,

1 Inc.; is that right?

2 A. Yes.

3 Q. And the A. Eugene Brockman Charitable Trust
4 owns about 96 percent of that holding company; is that
5 right?

6 MS. GULLEY: Form.

7 A. No. That's not correct. The -- the ownership
8 structure is different than that.

9 Q. (By Mr. Nemelka) Okay. And what is the
10 ownership structure?

11 MS. GULLEY: Objection; form.

12 A. The Universal Computer Systems Holding, Inc.,
13 is owned by Spanish Steps.

14 Q. (By Mr. Nemelka) Okay. When was Spanish Steps
15 formed?

16 A. I'm sorry. I -- I don't know the answer to
17 that.

18 Q. And who owns Spanish Steps?

19 A. The A. Eugene Brockman Charitable Trust.

20 Q. And what percentage of Spanish Steps does the
21 charitable trust own?

22 MS. GULLEY: Form.

23 A. Again, I don't know the answer to that. I
24 believe it's, substantially, all.

25 Q. (By Mr. Nemelka) Substan- -- does 96 percent

1 sound about right to you?

2 MS. GULLEY: Objection; form.

3 A. Yeah, I -- I can't guess at that.

4 Q. (By Mr. Nemelka) Is it between -- is it -- is
5 it in the 90s, the percentage?

6 MS. GULLEY: Objection; form.

7 A. I believe so.

8 Q. (By Mr. Nemelka) Are there any other owners of
9 Spanish Steps besides the Eugene Brockman Charitable
10 Trust?

11 MS. GULLEY: Objection; form.

12 A. Yes.

13 Q. (By Mr. Nemelka) And who are they?

14 MS. GULLEY: Form.

15 A. Norman Thomas Barras and Terry Jones. That's
16 all.

17 Q. (By Mr. Nemelka) That's all? And do they --
18 their ownership interest is about .8 -- is it 0.08
19 percent? Is that right?

20 MS. GULLEY: Form.

21 Q. (By Mr. Nemelka) Or 0.008 percent; is that
22 right?

23 A. It's 8/10ths of a percent.

24 MS. GULLEY: Form.

25 Q. (By Mr. Nemelka) 8/10ths of a percent,

1 correct. And there are no other owners besides those
2 two and the charitable trust; is that right?

3 MS. GULLEY: Form.

4 A. That's correct.

5 Q. (By Mr. Nemelka) So 8/10ths of a percent -- so
6 times that by -- by two, and then the rest of it is
7 owned by the charitable trust; is that right?

8 MS. GULLEY: Form.

9 A. I believe that's correct.

10 Q. (By Mr. Nemelka) So we're talking upwards of
11 98 -- 98 percent of the -- of the company, right?

12 MS. GULLEY: Form.

13 A. That's correct.

14 Q. (By Mr. Nemelka) Okay. And this is an
15 offshore trust; correct?

16 A. That's correct.

17 Q. Where is it based?

18 A. Bermuda.

19 Q. And when was the trust created?

20 MS. GULLEY: Objection; form.

21 A. 1981.

22 Q. (By Mr. Nemelka) Who were the trustees of the
23 trust?

24 MS. GULLEY: Objection; form.

25 A. There's a trust company called St. Johns Trust

1 Company.

2 Q. (By Mr. Nemelka) Are they the only trustees of
3 the trust?

4 A. Yes.

5 Q. And who appointed them as trustees of the
6 trust?

7 MS. GULLEY: Objection; form.

8 A. They were not the original trust company.
9 There's been a -- there's -- it was -- the original
10 trust company was Bank of Bermuda.

11 Q. (By Mr. Nemelka) And who appointed the Bank of
12 Bermuda as trustee?

13 MS. GULLEY: Objection; form.

14 A. I'm sorry. I can't give you an answer on that.
15 I'm not familiar with how trusts -- trusts get set up.

16 Q. (By Mr. Nemelka) Could St. Johns Trust Company
17 be removed as the trustee?

18 MS. GULLEY: Objection; form.

19 A. Yes.

20 Q. (By Mr. Nemelka) And who -- who has that
21 authority to remove them as trustee?

22 MS. GULLEY: Objection; form.

23 A. I -- I don't know the name of the person, but
24 there is the -- there is a trust protector.

25 Q. (By Mr. Nemelka) And who is the trust

1 protector?

2 A. I'm sorry. It's an individual. I don't know
3 the person's name.

4 Q. And who appointed the trust protector?

5 MS. GULLEY: Objection; form.

6 A. I'm sorry. I -- I don't know.

7 Q. (By Mr. Nemelka) And can the trust protector
8 be removed?

9 MS. GULLEY: Objection; form.

10 A. Again, this is an area of law that I'm -- I'm
11 not familiar with.

12 Q. (By Mr. Nemelka) And who are the beneficiaries
13 of the trust?

14 MS. GULLEY: Objection; form.

15 A. There is myself, my wife, my brother, his wife
16 and all the charities of Bermuda, United States, United
17 Kingdom.

18 Q. (By Mr. Nemelka) Excuse me. What was that
19 last one? All charities?

20 A. All -- all charities in the United States and
21 all charities in the United Kingdom.

22 Q. What does that mean, "all charities"? Every --
23 every 501c3 organization?

24 A. Every one of them is -- is a potential
25 beneficiary.

1 Q. I see. Does the -- does the trust distribute
2 income to the beneficiaries?

3 MS. GULLEY: Objection; form.

4 A. Yes.

5 Q. (By Mr. Nemelka) How often?

6 MS. GULLEY: Objection; form.

7 A. It depends upon what charitable project that
8 is -- is -- is underway. You know, the only -- the only
9 distributions have been to charitable entities.

10 Q. (By Mr. Nemelka) Those have been the only
11 distributions? To charitable entities?

12 A. Yes, sir.

13 Q. Have you -- have you received any charitable --
14 I mean -- excuse me -- have you received any
15 distributions from the trust?

16 A. No.

17 Q. And how much cash does the trust have?

18 MS. GULLEY: Objection; form.

19 A. I'm sorry. I don't know.

20 Q. (By Mr. Nemelka) Does the trust have any
21 day-to-day oversight responsibilities of the running of
22 the Reynolds and Reynolds Company?

23 MS. GULLEY: Objection; form.

24 A. No.

25 Q. (By Mr. Nemelka) You're the chairman and CEO

1 of Reynolds; correct?

2 A. Correct.

3 Q. And as -- your role as chairman and CEO of
4 Reynolds, you have ultimate decision-making authority
5 with respect to the company's practices and policies; is
6 that right?

7 MS. GULLEY: Objection; form.

8 A. Yes.

9 Q. (By Mr. Nemelka) Let's talk a little bit about
10 Reynolds, Mr. Brockman. Reynolds offers dealer
11 management system software to automotive dealers;
12 correct?

13 A. Yes.

14 Q. And it offers two different type of DMSs:
15 ERA-IGNITE and Power; correct?

16 A. Yes.

17 Q. And in the DMS market, CDK is your largest
18 competitor, right?

19 A. Yes.

20 Q. It's fair to say that CDK is Reynolds' chief
21 rival in the DMS market, right?

22 A. Yes.

23 MS. GULLEY: Form.

24 Q. (By Mr. Nemelka) And together you control
25 approximately 75 percent of the DS market for franchised

1 dealerships; isn't that right?

2 MS. GULLEY: Objection; form.

3 A. I -- I don't know -- or know how to keep track
4 of exactly what the percentages are, but -- but I would
5 say in that general area.

6 Q. (By Mr. Nemelka) At Reynolds, the DMS has a
7 database component where dealers store their data,
8 right?

9 MS. GULLEY: Objection; form.

10 A. Yes.

11 Q. (By Mr. Nemelka) And dealers generate a lot of
12 data in the course of operating their business; correct?

13 A. Yes.

14 Q. Sales transactions, right?

15 MS. GULLEY: Objection; form.

16 A. Yes.

17 Q. (By Mr. Nemelka) Vehicle inventory?

18 A. Yes.

19 MS. GULLEY: Objection; form.

20 Q. (By Mr. Nemelka) Parts inventory?

21 MS. GULLEY: Objection; form.

22 A. Yes.

23 Q. (By Mr. Nemelka) Information about the
24 dealership's customers, right?

25 MS. GULLEY: Objection; form.

1 A. Yes.

2 Q. (By Mr. Nemelka) And data from their service
3 departments; correct?

4 MS. GULLEY: Objection; form.

5 A. Yes.

6 Q. (By Mr. Nemelka) And you agree that the data
7 that dealers generate in running their business is the
8 dealer's, right?

9 MS. GULLEY: Objection; form.

10 A. Yes.

11 Q. (By Mr. Nemelka) You've publicly stated the
12 dealers own their data, right?

13 MS. GULLEY: Objection; form.

14 A. Yes.

15 Q. (By Mr. Nemelka) And you agree that dealers
16 should choose who has access to their data, right?

17 MS. GULLEY: Objection; form.

18 A. Yes.

19 Q. (By Mr. Nemelka) You've publicly told dealers
20 you own your data and choose who you allow access to it,
21 right?

22 MS. GULLEY: Objection; form.

23 A. I'm sorry. I don't remember saying that
24 specific statement.

25 (Exhibit 636 was marked for

1 identification.)

2 Q. (By Mr. Nemelka) I've marked Plaintiff's
3 Exhibit 636, which I will hand you. Mr. Brockman, do
4 you recognize this document?

5 A. Yes.

6 Q. Was this an -- a public advertisement that
7 you -- that Reynolds issued to the public?

8 A. This was done approximately 12 years ago.

9 Q. And was it issued to the public?

10 A. Yes.

11 Q. And if you look at the first bullet point
12 there, you say, "You own your data and choose who you
13 allow access to it," right?

14 A. Yes.

15 Q. You also told dealers with respect to their
16 data, quote, "You're the boss." If you look above that;
17 correct?

18 A. Yes.

19 Q. And that's a picture of you, there, on that
20 advertisement?

21 A. Yes. Good picture, I might add.

22 Q. Very nice one.

23 And that's your signature at the end?

24 A. Yes.

25 Q. Identifying you as the chairman and CEO of

1 Reynolds?

2 A. Correct.

3 Q. You can put that aside.

4 Reynolds also made similar representations
5 on its website; correct?

6 MS. GULLEY: Objection; form.

7 A. Sorry. I'm not familiar with that.

8 (Exhibit 637 was marked for
9 identification.)

10 Q. (By Mr. Nemelka) I've handed you a document
11 I've marked as Exhibit -- Plaintiff's Exhibit 637.
12 Mr. Brockman, this is a printout from the Reynolds
13 website. Does that look familiar to you?

14 MS. GULLEY: Objection; form.

15 A. It says it's Reynolds. I'm -- I'm personally
16 not familiar with what goes on our website. That's not
17 something I pay attention to.

18 Q. (By Mr. Nemelka) And if you look at the
19 first -- at the top of the -- of the text of this -- of
20 this webpage, it says, "Your Data, Your Way." Do you
21 see that?

22 A. Yes.

23 Q. And then it says, "You own your data. Reynolds
24 recognizes that you need to share that data outside your
25 dealership." Do you see that?

1 MS. GULLEY: Objection; form.

2 A. Yes, I see that.

3 Q. (By Mr. Nemelka) So this is consistent with
4 your public statement that -- that business -- excuse
5 me -- strike that.

6 This is consistent with your public
7 statement that we just looked at, that -- that data that
8 dealers generate in operating their business belongs to
9 the dealers, right?

10 MS. GULLEY: Form.

11 A. Yes. It -- you know, where it says, "You own
12 your data. Reynolds recognizes" -- I see that
13 statement.

14 Q. (By Mr. Nemelka) Thank you. You can put that
15 aside.

16 You're familiar with -- that Reynolds has a
17 standard DMS contract with its dealers; correct?

18 A. Yes.

19 Q. And the Reynolds standard DMS contract also
20 recognizes that the dealers own their data; correct?

21 A. Yes.

22 Q. It says, quote, Reynolds acknowledges that your
23 business data belongs to you," end quote; correct?

24 MS. GULLEY: Objection; form.

25 A. Yes.

1 Q. (By Mr. Nemelka) Dealers use a lot of software
2 applications besides DMS; correct?

3 A. I wouldn't characterize it as "a lot." They
4 certainly use some.

5 Q. Applications like customer relationship
6 management software, right?

7 MS. GULLEY: Form.

8 A. Yes.

9 Q. (By Mr. Nemelka) Inventory management;
10 correct?

11 MS. GULLEY: Form.

12 A. Umm, are you referring to parts inventory or
13 vehicle inventory?

14 MS. GULLEY: Form.

15 Q. (By Mr. Nemelka) Both. Vehic- -- let's do
16 vehicle inventory first.

17 MS. GULLEY: Form.

18 A. Yes.

19 Q. (By Mr. Nemelka) They use software to help
20 them in their service lane; correct?

21 MS. GULLEY: Form.

22 A. Yes.

23 Q. (By Mr. Nemelka) And their marketing efforts;
24 correct?

25 A. Yes.

1 MS. GULLEY: Form.

2 Q. (By Mr. Nemelka) And these applications need
3 access to dealer data to work, right?

4 MS. GULLEY: Form.

5 A. Correct.

6 Q. (By Mr. Nemelka) And above, we saw that you
7 publicly told dealers, "You own your data and choose who
8 you allow access to it." Remember that?

9 A. Yes.

10 Q. But that's not quite true, is it, Mr. Brockman?

11 MS. GULLEY: Objection; form.

12 A. I disagree.

13 Q. (By Mr. Nemelka) You don't let dealers choose
14 who has access to their data, do you?

15 MS. GULLEY: Objection; form.

16 A. They -- the dealers have access to their data,
17 you know, on their own. They can access it through
18 porting facilities that we have.

19 Q. (By Mr. Nemelka) But Reynolds, although it's
20 made a lot of exceptions, has taken the position that
21 dealer -- dealers can't grant access to their data to,
22 for example, independent integrators; is that right?

23 MS. GULLEY: Objection; form.

24 A. We have a program which is called the Reynolds
25 Certified Interface, which is entered into -- whoever

1 they want to share data with, that covers protections of
2 data from a security standpoint.

3 Q. (By Mr. Nemelka) You don't let independent
4 integrators, like Authenticom, into the RCI program, do
5 you?

6 A. We do not.

7 Q. And so if a dealer wanted to grant access to
8 their data to Authenticom, you don't allow that, do you?

9 A. They're perfectly free to run reports and --
10 and send those reports in electronic form to
11 Authenticom.

12 Q. But in terms of access to their data in an
13 automated way, you don't allow that, do you?

14 MS. GULLEY: Objection; form.

15 A. As far as unattended access, that's correct.
16 We do not allow that.

17 Q. (By Mr. Nemelka) And that's different from
18 what CDK's position once was; correct?

19 MS. GULLEY: Objection; form.

20 A. I'm not familiar with what CDK's historical
21 positions have been on this issue.

22 Q. (By Mr. Nemelka) You don't know what CDK's
23 practices were?

24 A. They have lots of different practices. I'm
25 not -- I'm not an expert in their -- their practices.

1 Q. You knew that CDK did let dealers use
2 independent integrators, right?

3 MS. GULLEY: Objection; form.

4 A. Again, I'm -- I'm not knowledgeable about what
5 CDK does or doesn't do in this regard.

6 Q. (By Mr. Nemelka) In fact, back in 2007, you
7 said that, from a business standpoint, you -- you
8 couldn't imagine that that was truly CDK's position,
9 right?

10 A. I'm sorry. I don't -- I don't remember or
11 recall -- can you give me more information?

12 (Exhibit 638 was marked for
13 identification.)

14 Q. (By Mr. Nemelka) I've marked this Exhibit
15 638 -- Plaintiff's 638, which I've handed you. It's --
16 Automotive News article entitled "Question & Answer:
17 Deal puts Brockman in the spotlight," dated February
18 9th -- 19th, 2007. Mr. Brockman, do you recognize this
19 Automotive News article?

20 MS. GULLEY: Objection; form.

21 A. Not specifically.

22 MS. GULLEY: You can take a second to
23 review it.

24 Q. (By Mr. Nemelka) Did you grant an interview to
25 Automotive News around this time, Mr. Brockman?

1 MS. GULLEY: Objection; form.

2 A. I believe so.

3 Q. (By Mr. Nemelka) And this is an article
4 reflecting the contents of that interview; correct?

5 MS. GULLEY: Objection; form.

6 You haven't offered him the opportunity to
7 review it.

8 MR. NEMELKA: Andi, please comply with the
9 deposition protocol order.

10 A. I would like to have a little bit of time to
11 read it.

12 Q. (By Mr. Nemelka) Sure. Do you recognize,
13 though, this is -- reflects an interview that you gave
14 to Automotive News, Mr. Brockman?

15 MS. GULLEY: Objection; form.

16 A. If you let me finish reading this back page,
17 it's got a lot of information on it.

18 Q. (By Mr. Nemelka) Sure. I'm -- I'm only going
19 to ask you about one -- about one -- one question and
20 answer.

21 MS. GULLEY: Objection; form.

22 A. Okay. What is your question?

23 Q. (By Mr. Nemelka) This reflects an interview --
24 the contents of an interview that you gave to Automotive
25 News; correct?

1 MS. GULLEY: Objection; form.

2 A. Yes. That was approximately a month and a half
3 after the acquisition.

4 Q. (By Mr. Nemelka) Correct. And if you turn to
5 the second page, the question that -- that Automotive
6 asked you, "ADP Dealer Services" -- now, ADP is now CDK;
7 correct?

8 A. Yes.

9 MS. GULLEY: Objection; form.

10 MR. RYAN: Object to form.

11 Q. (By Mr. Nemelka) "ADP Dealer Services will
12 not" -- excuse me, the ADP that's referred to here was
13 -- the dealer services was spun off and became CDK;
14 correct?

15 MR. RYAN: Objection.

16 A. That's my understanding.

17 Q. (By Mr. Nemelka) Right. So it says, "ADP
18 Dealer Services will not prohibit dealers from providing
19 their vendors with a user ID and password to extract
20 data." What are your thoughts about that?

21 Do you see that question?

22 A. Yes.

23 Q. And you gave an answer. "I don't understand
24 ADP's position. Other than to be obstinate, than to be
25 opposite, I can't imagine from a business standpoint

1 that that's truly their position. And frankly it would
2 be my opinion that after awhile they probably change
3 that position." Do you see that?

4 A. Yes.

5 Q. And that accurately reflects what you said?

6 MS. GULLEY: Objection; form.

7 A. Yes.

8 Q. (By Mr. Nemelka) And so you knew that CDK's
9 position was that they did not stop dealers from
10 allowing -- they did not stop dealers from using
11 independent integrator's automated access to their data;
12 correct?

13 MS. GULLEY: Objection; form.

14 A. No. I don't agree with that. And that's
15 certainly not what I said. What I said is, "I don't
16 understand ADP's position. Other than to be obstinate,
17 than to be opposite, I can't imagine from a business
18 standpoint that that's truly their position. And
19 frankly it would be my opinion that after awhile they
20 probably change that position."

21 Q. (By Mr. Nemelka) And CDK did change their
22 position on that, didn't they?

23 MS. GULLEY: Objection; form.

24 A. It's my understanding that -- that they have
25 made changes. Now, exactly what changes they've made,

1 I'm not familiar with.

2 Q. (By Mr. Nemelka) CDK didn't change that
3 position, though, until years later, right?

4 MS. GULLEY: Objection; form.

5 UNIDENTIFIED SPEAKER: Mike, one objection
6 is good for both defendants, right?

7 MR. NEMELKA: Yes.

8 UNIDENTIFIED SPEAKER: Okay, thank you.

9 THE WITNESS: I'm sorry. Could you repeat
10 the question?

11 Q. (By Mr. Nemelka) Sure. And CDK didn't change
12 that position until years later, though; correct?

13 MS. GULLEY: Objection; form.

14 A. Again, I've not tracked what ADP has done in
15 this regard. My guess is -- and that's there's been a
16 series of changes.

17 Q. (By Mr. Nemelka) But in the meantime, before
18 CDK changed, CDK Reynolds engaged in what you called,
19 Mr. Brockman, "the data wars"; isn't that right?

20 MS. GULLEY: Objection; form.

21 A. I've not ever used that term, so I don't know
22 who has.

23 Q. (By Mr. Nemelka) You've never used the term,
24 "data wars"?

25 MS. GULLEY: Objection; form.

1 A. No. (Inaudible.)

2 Q. (By Mr. Nemelka) Now, CDK not only had an open
3 system in the sense that it let dealers use independent
4 integrators, but it also had its own independent
5 integrators, like DMI and Integra Link!; correct?

6 MS. GULLEY: Objection; form.

7 A. Correct.

8 Q. (By Mr. Nemelka) And DMI and Integra
9 Link! provided access to the data belonging to Reynolds'
10 dealers; correct?

11 MS. GULLEY: Objection; form.

12 A. Yes. They -- they hacked our systems
13 extensively.

14 Q. (By Mr. Nemelka) And Reynolds' dealers would
15 grant DMI and Integra Link! access to their data by
16 creating log-in credentials for them, right?

17 MS. GULLEY: Objection; form.

18 A. Yes.

19 Q. (By Mr. Nemelka) And then DMI and Integra
20 Link! would then provide the dealer data to third-party
21 vendors; correct?

22 A. Yes.

23 Q. Including OEMs, right?

24 MS. GULLEY: Form.

25 A. Yes.

1 Q. (By Mr. Nemelka) And when I say "OEMs," I mean
2 the car manufacturers, like Ford, Chevy, Toyota, right?

3 MS. GULLEY: Form.

4 A. That's correct.

5 Q. (By Mr. Nemelka) You understand that's what I
6 mean, right?

7 A. Yes.

8 Q. Mr. Brockman, I've handed you what has been
9 previously marked as Plaintiff's Exhibit 442. I'll
10 describe it and then you can look at it. This is an
11 email from you, Bob Brockman, to Ron Workman and Steve
12 Anenen, dated Sunday, June 10th, 2007. Do you see that?

13 MS. GULLEY: Objection; form.

14 A. Yes.

15 Q. (By Mr. Nemelka) And to this email, you
16 attach -- you made an attachment; correct?

17 MS. GULLEY: Form.

18 Q. (By Mr. Nemelka) Have you finished reading it,
19 Mr. Brockman?

20 A. Yes.

21 Q. Thank you. So if you look at the email that
22 you -- you sent this email to Mr. Workman and
23 Mr. Anenen; correct?

24 A. Yes.

25 Q. Steve Anenen was the CEO of CDK?

1 A. That's correct.

2 Q. And Ron Workman was a senior vice-president
3 there?

4 A. Yes.

5 Q. And in the third -- third line down, you write,
6 "Please see the attached thoughts regarding our mutual
7 opportunities." Do you see that?

8 A. Yes.

9 Q. And then you said -- then you write, "As I said
10 at our initial meeting on the subject at NADA" -- what
11 is NADA?

12 A. It's the National Auto Dealers Association.

13 Q. And what does that mean, "at NADA"?

14 A. There's an annual convention and trade show.

15 Q. Is it once a year?

16 A. Yes.

17 Q. And at this convention, you -- you met with
18 Mr. Workman?

19 A. Yes.

20 Q. And at these annual conventions, you frequently
21 meet -- meet with executives from CDK; correct?

22 MS. GULLEY: Objection; form.

23 A. No.

24 Q. (By Mr. Nemelka) Is this the only time you
25 ever met with a CDK executive at NADA?

1 A. No. It's not the only time, but it -- it is --
2 to characterize it as something that happens a lot, it's
3 not. It's rare. And this is certainly the first time
4 that I had ever met Steve Anenen.

5 Q. And then you write -- well, you said, "As I
6 said in our initial meeting on the subject at NADA, I
7 believe that there some attractive opportunities here
8 that in the longer term can be quite significant." Do
9 you see that?

10 MS. GULLEY: Objection; form.

11 A. Yes.

12 Q. (By Mr. Nemelka) So let's turn the page to
13 the document that you attached. If you could go to the
14 last section on Data Services, on the second page. And
15 you have -- having read this -- this attachment, this
16 was proposing a joint venture between CDK and Reynolds
17 for the service of extracting data from dealership
18 systems; correct?

19 MS. GULLEY: Objection; form.

20 Q. (By Mr. Nemelka) Mr. Brockman?

21 A. Yes.

22 Q. And ADP, meaning CDK, would contribute the DMI
23 business that we just discussed; correct?

24 MS. GULLEY: Form.

25 A. Yes.

1 Q. (By Mr. Nemelka) And then Reynolds would
2 contribute its technology for accessing the Reynolds DMS
3 systems; correct?

4 MS. GULLEY: Form.

5 A. That's what was under consideration, but it --
6 I think it's -- it's correct to add that -- that this
7 was a proposed process that never occurred. And
8 further -- on further examination, subsequent to this, I
9 decided that it would be a wrong thing to do.

10 Q. (By Mr. Nemelka) Why would it be a wrong thing
11 to do?

12 A. I don't believe that accessing dealership
13 systems to extract data in the manner that DMI and that
14 their other entities were doing it to be proper.

15 Q. But at least here, you had proposed talking
16 about forming a joint venture to do that; correct?

17 MS. GULLEY: Objection; form.

18 A. What I'm doing is -- is I'm -- I'm commenting
19 on -- on their proposals.

20 Q. (By Mr. Nemelka) You described it as
21 an attractive opportunity that could be quite
22 significant in your email, didn't you?

23 MS. GULLEY: Objection; form.

24 A. On further examination, you know, that was not
25 the case.

1 Q. (By Mr. Nemelka) And would other competitors
2 to this data services joint venture be allowed to access
3 the data for Reynolds and -- and CDK dealers, or only
4 this joint venture?

5 MS. GULLEY: Objection; form.

6 A. Again, this was an early-on idea which was not
7 followed up on. Specifically, we did not do anything in
8 this regard.

9 Q. (By Mr. Nemelka) The thought was, though, that
10 only the Reynolds and CDK joint venture would be able to
11 provide data access to Reynolds and CDK, not others;
12 correct?

13 MS. GULLEY: Objection; form.

14 A. That -- that was the -- the original proposal
15 from CDK.

16 Q. (By Mr. Nemelka) So competitors like
17 Authenticom would not be able to compete with this joint
18 venture, right?

19 MS. GULLEY: Objection; form.

20 A. From a thought standpoint, this -- this project
21 never got that far.

22 Q. (By Mr. Nemelka) But you said that was the
23 original conception that CDK --

24 MS. GULLEY: Objection --

25 MR. NEMELKA: Let me finish my question,

1 Andi.

2 Q. (By Mr. Nemelka) You said that was the
3 original proposal from CDK, though, right?

4 MS. GULLEY: Objection; form.

5 A. Again, there was -- there was another document,
6 which I don't have and I don't know whether it exists,
7 but it's -- it certainly did exist, where what ADP was
8 proposing was -- was laid out. And this was an initial
9 response. Again -- I'll repeat again, this project did
10 not go anywhere. It did not happen.

11 Q. (By Mr. Nemelka) At this time, were you --
12 when you were considering this joint venture, DMI was
13 extracting data for vendors from Reynolds' DMS; correct?

14 MS. GULLEY: Objection; form.

15 A. At this particular point in time, this -- this
16 was approximately seven months after the acquisition
17 of -- of a very, very large company. It was extremely
18 busy in all kinds of operational details, and for me to
19 know what was going on with Reynolds systems and outside
20 third parties at that point in time was impossible. The
21 best I could have would be, you know, hazy knowledge,
22 but not, you know, absolute knowledge.

23 Q. (By Mr. Nemelka) Well, here you wrote that CDK
24 would contribute the DMI business to this new co-entity
25 along with the technology for accessing DMS systems,

1 right?

2 MS. GULLEY: Objection; form.

3 A. Again, that was in response to their proposal.

4 And again -- I repeat again, this project went nowhere.

5 (Exhibit 639 was marked for

6 identification.)

7 Q. (By Mr. Nemelka) I've handed you Plaintiff's
8 Exhibit 639. And, Mr. Brockman, I'll represent to you
9 that the metadata for this document states that, as
10 produced by -- by your counsel, that this came from your
11 custodial file and that it was -- date last modified was
12 July 29th, 2012. And the file name is "ADP Data
13 Agreement Talking Points." Okay?

14 MS. GULLEY: Objection; form.

15 Q. (By Mr. Nemelka) Did you hear that,
16 Mr. Brockman?

17 A. Yes.

18 Q. Okay. Do you recognize these as talking points
19 that you created for ADP Data Agreement?

20 MS. GULLEY: Objection; form.

21 A. Yes. These were talking points that would take
22 place between myself and ADP.

23 Q. (By Mr. Nemelka) And who at ADP?

24 A. Steve Anenen.

25 Q. Is this a phone call?

1 MS. GULLEY: Objection; form.

2 A. Yes.

3 Q. (By Mr. Nemelka) And was it a phone call
4 around the time of July 29th, 2012?

5 MS. GULLEY: Form.

6 A. I don't know what date -- I remember creating
7 this document, thinking that a phone call was going to
8 be imminent. It was not imminent. It was at some
9 considerable length of time afterwards.

10 Q. (By Mr. Nemelka) "Considerable length of
11 time," meaning a few weeks or months?

12 A. Months.

13 Q. A few months? And these are the talking points
14 that you prepared for that phone conversation with
15 Mr. Anenen?

16 A. Yes.

17 Q. And did you deliver these talking points?

18 MS. GULLEY: Form.

19 A. I'm not sure what all points were actually
20 covered. These were the points that I wanted to cover.
21 Whether I got them all done or not, I -- I don't think I
22 got them quite done.

23 Q. (By Mr. Nemelka) I just want to ask you about
24 a few of the bullet points here, Mr. Brockman. The
25 first one you say, "Unattended remote access to Reynolds

1 systems is going to cease." Do you see that?

2 A. Yes.

3 Q. So 2012, unattended remote access was still
4 happening on the Reynolds system, right?

5 A. That's correct.

6 Q. Including by CDK; correct?

7 A. That's right. CDK -- or CDK subsidiaries were
8 identified as some of the most, you know -- they were
9 the worst hackers out there. And -- and this first
10 line, "Unattended remote access to Reynolds systems is
11 going to cease," that was not a pleasant statement.
12 That was a -- a statement of fact. The fact was pretty
13 ugly.

14 Q. And -- and the data agreement, the document is
15 titled "Data Agreement." And what was the data
16 agreement that you envisioned entering into with CDK?

17 MS. GULLEY: Objection; form.

18 A. The -- the data agreement involved a -- a
19 phased shutdown, as opposed to an abrupt stop.

20 MS. GULLEY: Objection; form.

21 Q. (By Mr. Nemelka) And is this a call that was
22 initiated by you, or Mr. Anenen?

23 A. I -- I had requested a call. Whether he called
24 me or I called him, I don't recall.

25 Q. You requested the call?

1 MS. GULLEY: Objection; form.

2 A. Yes.

3 Q. (By Mr. Nemelka) And this is the first time
4 that you had discussed with Mr. Anenen having CDK stop
5 accessing the Reynolds systems?

6 MS. GULLEY: Objection; form.

7 A. I don't recall whether or not it was the first
8 time or not.

9 Q. (By Mr. Nemelka) And what did Mr. Anenen say
10 in response?

11 A. It was a rather unusual call. There was
12 about -- it was an hour-long call, and there was about
13 15 minutes' worth of this active discussion and then 45
14 minutes of -- of just unproductive conversation.

15 Q. What does that -- what -- why was it
16 unproductive?

17 A. Mr. Anenen did not want to address the issues.
18 He wanted to talk about other things.

19 Q. So on these topics, the call lasted about 15
20 minutes?

21 A. Uh-huh. (Witness answers affirmatively.)

22 Q. And what -- what did he respond -- how did he
23 respond when you told him that unattended remote access
24 to Reynolds systems is going to cease?

25 A. He didn't make a specific reply to that

1 statement.

2 Q. And what was his general response to your
3 proposal here?

4 MS. GULLEY: Objection; form.

5 A. I would say it was -- it didn't make a lot of
6 progress. You know, Steve Anenen is a very, very nice
7 guy, and he's a person that is unlikely to say no, you
8 know. He's just -- he's not that kind of person. But
9 he did not make a positive response.

10 Q. (By Mr. Nemelka) Meaning he said that CDK
11 would continue to access the Reynolds system?

12 MS. GULLEY: Objection; form.

13 A. No. He did not answer that specific issue.
14 Again, he's a very nice guy.

15 Q. (By Mr. Nemelka) Did he give you any
16 indication one way or the other whether he was
17 interested in engaging in the discussions further, after
18 this phone call?

19 MS. GULLEY: Objection; form.

20 A. At -- at that point, he did not.

21 Q. (By Mr. Nemelka) At this time, Reynolds was
22 using Authenticom for -- strike that.

23 Reynolds has its own software application,
24 separate from the DMS; correct?

25 A. I wouldn't say separate from the DMS, but

1 there's some things that we do that are not totally
2 related to our own DMS.

3 Q. Right. Software solutions that you -- that
4 dealers use, separate from the DMS; correct?

5 MS. GULLEY: Objection; form.

6 A. It's a very, very small, you know, part of our
7 business.

8 Q. (By Mr. Nemelka) And at this time, Reynolds
9 was using Authenticom for the data needs for those
10 applications; correct?

11 MS. GULLEY: Objection; form.

12 A. Yes. Again, the particular data that we're
13 talking about has to do with service reminder cards,
14 principally, and it's a very small thing. And we use
15 Authenticom from an expediency standpoint to, you know,
16 get us the data.

17 Q. (By Mr. Nemelka) And this was data from CDK
18 DMS; correct?

19 A. Yes.

20 Q. And if you go to the next page, you have a --
21 you have a -- a bullet point here where it starts with
22 "batch type data." Do you see that?

23 A. Yes.

24 Q. It says, "Batch type data that Authenticom (or
25 some other Reynolds agent)" -- so let me stop there. So

1 you considered Authenticom a Reynolds agent in
2 collecting the data; is that right?

3 A. I don't --

4 MS. GULLEY: Objection; form.

5 A. I don't know if we would consider Authenticom
6 an agent. They -- they provided a service.

7 Q. (By Mr. Nemelka) You say, "Batch type data
8 that Authenticom (or some other Reynolds agent) collects
9 from ADP sites for Reynolds to use in marketing programs
10 that it sells to the dealer would require that this data
11 is used for no other purpose." Do you see that?

12 MS. GULLEY: Objection; form.

13 A. Yes.

14 Q. (By Mr. Nemelka) So you envisioned that
15 Reynolds would continue to use Authenticom even after
16 this proposed data agreement with CDK; is that right?

17 MS. GULLEY: Objection; form.

18 A. I don't think that, you know, I would
19 characterize this paragraph in that way. There's no
20 suggestion here it's long term. Anytime that you have a
21 process set up for a collection of data, to tear it up,
22 you know, involves some effort. And what we're talking
23 about that's described in this document here, there's
24 things to be done short term. There is no implication
25 here that long term -- you know, longer than what the

1 immediate, you know, time frame would be -- that we
2 would continue to use Authenticom.

3 Q. (By Mr. Nemelka) This is 2012, right?

4 MS. GULLEY: Objection; form.

5 A. Yeah.

6 Q. (By Mr. Nemelka) Reynolds continued to use
7 Authenticom clear to -- through 2017, right?

8 MS. GULLEY: Objection; form.

9 A. I'm not aware of -- of how long that -- that
10 occurred.

11 Q. (By Mr. Nemelka) Certainly, you know, for
12 years after this, Reynolds continued to use Authenticom,
13 right?

14 MS. GULLEY: Objection; form.

15 A. Again, I'm not aware of what's going on.

16 Q. (By Mr. Nemelka) All right, well --

17 A. In -- in the -- in that particular regard.

18 Q. We have some documents on that.

19 MS. GULLEY: Objection; to the sidebar.

20 Q. (By Mr. Nemelka) You said "agents." You say
21 here, "The use of a 3rd-party acting under contract as
22 an agent of ADP or Reynolds is not an issue as long as
23 the specific RCI agreement is directly between us." Do
24 you see that?

25 MS. GULLEY: Objection; form.

1 A. Yes.

2 Q. (By Mr. Nemelka) What did you mean by that?

3 MS. GULLEY: Objection; form.

4 A. What the focus in this particular passage is --
5 and that's that we'd want to have a contract directly
6 with the -- the owner of the data.

7 Q. (By Mr. Nemelka) Well, the contract with the
8 owner of data? That would be the dealer, right?

9 MS. GULLEY: Objection; form.

10 A. Correct.

11 Q. (By Mr. Nemelka) And so you would consider
12 those who go and collect the data on your behalf as your
13 agents; correct?

14 MS. GULLEY: Objection; form.

15 A. I think what -- what we're talking about here
16 is -- and that's that, you know, we don't use agents.
17 What we want to do is we want to have direct contracts
18 with the collector of the data and also the owner of the
19 data.

20 Q. (By Mr. Nemelka) Well, what you write here is
21 that "The use of a 3rd party acting under contract as an
22 agent of ADP or Reynolds is not an issue as long as the
23 specific RCI agreement is directly between us." Do you
24 see that?

25 MS. GULLEY: Objection; form.

1 A. Well, I -- I think that's -- that states
2 clearly that we -- the agreement we want is -- we want
3 one directly between us and -- and not, you know,
4 with any use of an agent.

5 Q. (By Mr. Nemelka) And "an agent" being those
6 that go and collect data on your behalf; correct?

7 MS. GULLEY: No.

8 Objection; form. I'm sorry. It was -- I'm
9 sorry.

10 MR. NEMELKA: That's improper to answer the
11 question. I asked the witness.

12 MS. GULLEY: I'm so sorry, Mike.

13 MR. NEMELKA: It's okay.

14 MS. GULLEY: It was not -- not intentional.

15 UNIDENTIFIED: Same objection.

16 MR. NEMELKA: We'll just leave the record
17 like that.

18 MS. GULLEY: Well, he can answer the
19 question.

20 MR. NEMELKA: Sure.

21 Q. (By Mr. Nemelka) Do you need me to repeat the
22 question, Mr. Brockman?

23 A. I need to reread this.

24 Q. My simple question was -- is that you have here
25 a section called "Use of Agents." You say, "The use of

1 a 3rd party acting under contract as an agent of ADP or
2 Reynolds is not an issue as long as the specific RCI
3 agreement is directly between us -- either of us would
4 take responsibility for their agents." Do you see that?

5 MS. GULLEY: Form.

6 A. Yes.

7 Q. (By Mr. Nemelka) And my question is that the
8 agents that you're referring to are those that would go
9 and collect the data on your behalf; correct?

10 A. I think I'm referring to DMI, Integra.

11 Q. Okay. Did you know how Authenticom accessed
12 data on a CDK system?

13 MS. GULLEY: Objection; form.

14 A. No.

15 Q. (By Mr. Nemelka) Did you know that they were
16 issued log-in credentials, just like DMI and Integra
17 Link! were for Reynolds?

18 MS. GULLEY: Objection; form.

19 A. I'm not aware of that.

20 MS. GULLEY: Are you at a stopping point,
21 Mike?

22 MR. NEMELKA: Sure.

23 MS. GULLEY: Let's take a break.

24 THE VIDEOGRAPHER: The time is 10:25 a.m.,
25 and we're off the record.

1 (Short recess 10:25 to 10:50 a.m.)

2 THE VIDEOGRAPHER: The time is 10:50 a.m.

3 We're back on the record.

4 EXAMINATION (Continuing)

5 BY MR. NEMELKA:

6 Q. Mr. Brockman, have you heard of the phrase
7 "whitelisting"?

8 MS. GULLEY: Objection; form.

9 A. In -- in recent years, yes.

10 Q. (By Mr. Nemelka) The -- where -- as I think of
11 the term "whitelisting," that's where Reynolds issues a
12 protected user ID that will be exempt from Reynolds'
13 security processes.

14 MS. GULLEY: Object- -- hold on. Let him
15 finish.

16 Q. (By Mr. Nemelka) Is that -- is that how you
17 associate the term?

18 MS. GULLEY: Objection; form.

19 A. No.

20 Q. (By Mr. Nemelka) Reynolds did allow the
21 feeding of data through protected user IDs that were
22 exempt from the secur- -- Reynolds' security processes,
23 right?

24 MS. GULLEY: Objection; form.

25 A. I would say the answer to that is -- is

1 qualified as -- as temporary access. I think it's
2 important that, from a transitional standpoint, that's
3 where that's been used.

4 Q. (By Mr. Nemelka) And it was used with CDK's
5 access to the Reynolds system; correct?

6 MS. GULLEY: Objection; form.

7 A. The answer to that is no. The -- the only time
8 that that was used is -- or that process was used was in
9 the situation where everybody's agreed that they're
10 going to stop hacking. They're going to stop being
11 bandits. They're going to get straight. And, you know,
12 we've seen fit to facilitate an orderly stand-down, in
13 which case, you know, we issued user IDs that were
14 temporary in nature.

15 Q. (By Mr. Nemelka) That was in 2000 --

16 MS. GULLEY: Are you finished Mr. Brockman?

17 THE WITNESS: No.

18 A. That's completely different than, you know,
19 what my connotation of whitelist is. Whitelist, in my
20 terminology, has to do with email.

21 I have a lot of problems with spam email.
22 And one of the ways that you deal with spam email is --
23 is you decide what select group of people you'll accept
24 email addresses from, and you -- you create a list. And
25 that's what's called a "whitelist." You know, that's --

1 that's my knowledge of the use of the term.

2 Q. (By Mr. Nemelka) So where Reynolds issued
3 these protected user IDs for CDK, that was -- that you
4 were referring to, was that in connection with the 2015
5 wind-down agreement?

6 MS. GULLEY: Form.

7 A. That was one of the factors in that wind-down
8 agreement. It was -- again, first and foremost, that
9 they're -- they're going to stop hacking. They're going
10 to stop being bandits. And this is a temporary
11 situation, you know, where it's a wind-down.

12 Q. (By Mr. Nemelka) Reynolds did it for CDK long
13 before 2015, didn't it?

14 MS. GULLEY: Objection; form.

15 A. Not to my knowledge.

16 Q. (By Mr. Nemelka) Okay. I've handed you
17 Exhibit -- Plaintiff's Exhibit 640.

18 (Exhibit 640 was marked for
19 identification.)

20 Q. (By Mr. Nemelka) And I'll describe it and then
21 you can read it. It's an email from you, Mr. Brockman,
22 dated Friday, February 20, 2013, to Ron Lamb. I'll give
23 you a minute to read it.

24 A. I'm familiar with this issue here.

25 Q. Are you finished reading --

1 A. Let -- let me finish.

2 We have been -- you know, the war with the
3 bandits and the hackers, it's been going on for a long
4 time. And what we've done over the years is -- and
5 that's that we've created barriers. And what happens
6 is, in this, is sometimes the barrier blocks somebody
7 that is -- is causing them a great deal of problem. And
8 what we'll do is -- and that's on a temporary basis
9 while we get the -- you know, the issue -- specific
10 issue sorted out, we will issue a user ID temporarily.

11 And I think that that's reflected in -- it
12 reads, "Obviously it is not getting communicated
13 correctly -- or the dealership person is not listening
14 to the description of the circumstances around the
15 situation -- which is that a formal agreement has been
16 reached whereby entrance into the RCI world by the OEM
17 [involved] will begin.

18 "Part of this [that] agreement is to allow
19 the feeding of data by 'bandit procedures' to continue
20 to exist in [during] the transition period." And that's
21 what it's all about.

22 Q. Will you continue to read that last sentence of
23 your email?

24 MS. GULLEY: Objection; form.

25 A. "The new USER-ID is a special one that we know

1 about -- and there will be exempt from the security
2 processes."

3 What's not, clearly, part of that sentence
4 is "This is a temporary transition."

5 Q. (By Mr. Nemelka) Mr. Brockman, this was user
6 IDs that were for both Integra Link! and DMI; correct?

7 MS. GULLEY: Objection; form.

8 A. Yes. I believe -- I believe, in this
9 particular situation, they were the folks that were
10 described -- which they're our -- our worst hackers.

11 Q. (By Mr. Nemelka) And this is in 2013; correct?

12 MS. GULLEY: Objection; form.

13 A. Yes. That's -- that's the date.

14 Q. (By Mr. Nemelka) And the bottom email is an
15 email from a dealership to Reynolds, right?

16 MS. GULLEY: Objection; form.

17 A. Yes.

18 Q. (By Mr. Nemelka) Sunset -- excuse me. Sorry.

19 A. That's correct. The email is to Reynolds, from
20 a customer of Reynolds.

21 Q. And the customer says, "I have now received
22 three calls from the TAC" -- what is the TAC?

23 A. That stands for Technical Assistance Center.

24 Q. Of Reynolds?

25 A. Yes.

1 Q. -- "about setting up user IDs for both
2 Integralink and DMI to allow non-regulated access to our
3 Reynolds system."

4 Then he goes on, "I find it extremely
5 hypocritical that for the better part of 3-4 years
6 Reynolds has pretty much pissed off a large majority of
7 your customer with 'security' enhancements that locked
8 out these companies in one way or another. Now all of a
9 sudden, Reynolds is calling me to set up exactly what we
10 were told was a security problem. So my questions is
11 how is this still not a security problem."

12 Do you see that?

13 MS. GULLEY: Form.

14 Q. My question is: Do you see that?

15 MS. GULLEY: Form.

16 A. I see, you know, what you have read.

17 Q. (By Mr. Nemelka) Did you -- do you agree with
18 the dealer that it's hypocritical for Reynolds to be
19 creating these protected user IDs that are exempt from
20 its security processes?

21 MS. GULLEY: Form.

22 A. No. I -- I disagree with that statement.

23 MS. GULLEY: Are you --

24 A. And the characterization that this particular
25 writer, this Christopher K. Upright, that we have,

1 quote, angered a number of our customers over the last
2 three or four years, you know, that's way too strong of
3 a characterization. There's no question there's been
4 inconveniences as we have, you know, ratcheted down, you
5 know, hackers' access. And that's exactly what happened
6 here, and we -- we obviously dealt with it.

7 Q. Dealers left Reynolds over this issue of data
8 access, didn't they?

9 A. There has been some, but a very small minority.

10 Q. And they transitioned, during this time period,
11 to CDK over those issues; correct?

12 MS. GULLEY: Objection; form.

13 A. I don't have any, you know -- you know,
14 knowledge of -- of the -- you know, that correlates
15 security issues to, you know, number of dealerships that
16 departed. I just don't have that information, if it
17 exists.

18 Q. (By Mr. Nemelka) Reynolds keeps track of
19 reasons that dealers leave it, don't -- doesn't it?

20 A. To the extent that we can ascertain, you know,
21 why, we do. You know, in many, many cases, we can't.

22 Q. And you're aware that, in tracking, that there
23 were many instances -- there were instances where
24 dealers said they were leaving Reynolds for CDK because
25 of the data access policies, right?

1 MS. GULLEY: Objection; form.

2 A. I would say that there -- there are some
3 dealers that have left us over data access, but -- but,
4 this is, you know, a very tiny minority.

5 Q. (By Mr. Nemelka) In your email about the user
6 IDs being exempt from security processes, what does
7 "exempt" mean?

8 MS. GULLEY: Objection; form.

9 A. I'm sorry. I'm not understanding.

10 Q. (By Mr. Nemelka) You wrote, "The new USER-ID
11 is a special one that we know about -- and they" -- "and
12 there will exempt from the security processes." What
13 does that "exempt" mean?

14 MS. GULLEY: Objection; form.

15 A. I think it means what it says.

16 Q. (By Mr. Nemelka) Security processes will not
17 apply to those protected user IDs, right?

18 MS. GULLEY: Objection; form.

19 A. The -- the specific security issue that is
20 causing this particular customer unhappiness, that's
21 what the new user ID will -- will exempt them from.
22 Until such time as -- as we have our -- our piece of
23 code -- which is actually, you know, performing the
24 security check a little too aggressively -- until that's
25 corrected.

1 Q. (By Mr. Nemelka) You can set that aside. Oh,
2 one -- real quick. The access that DMI and Integra
3 Link! had to the Reynolds system was automated access;
4 correct?

5 MS. GULLEY: Objection; form.

6 Q. (By Mr. Nemelka) That was protected?

7 MS. GULLEY: Objection; form.

8 A. Again, the -- the user ID, you know, gave the
9 ability to -- for, you know, a person to log on to the
10 system. Exactly, you know, what they did with that, I
11 can't tell from this.

12 Q. (By Mr. Nemelka) You weren't -- you're not
13 aware that -- that -- that protected user IDs for CDK
14 were for data access in an automated way?

15 MS. GULLEY: Objection; form.

16 A. I'm not aware of that.

17 Q. (By Mr. Nemelka) Okay. You can set that
18 aside.

19 (Exhibit 641 was marked for
20 identification.)

21 Q. (By Mr. Nemelka) I've handed you Plaintiff's
22 Exhibit 641, which is an email -- the top email is an
23 email from Bob Schaefer to Howard Gardner at CDK
24 forwarding an email from you, Mr. Brockman, to Robert
25 Schaefer on November 25th, 2013. Do you see your email

1 to Mr. Schaefer where you write on November 25th, 2013?

2 MS. GULLEY: Objection; form.

3 A. Sorry. If you will give me a moment to --

4 Q. (By Mr. Nemelka) Let me -- I'll let you review
5 the document. I just want -- I just want to point out
6 your email to Mr. Schaefer, if I could.

7 A. Please, let me read the document.

8 Q. Okay.

9 A. Again, I --

10 Q. Have you finished reading them?

11 A. Yes.

12 Q. Okay, thank you.

13 A. Please repeat the question.

14 Q. Yes. So you sent an email -- it's the second
15 from the top -- you sent an email dated November 25,
16 2013 to Robert Schaefer where you write, "Bob, you have
17 authority to pursue discussions with ADP on these
18 subjects as per our conversation." Do you see that?

19 A. Yes.

20 Q. So this is you giving Mr. Schaefer -- who is a
21 Reynolds executive; correct?

22 MS. GULLEY: Objection; form.

23 A. That is correct.

24 Q. (By Mr. Nemelka) -- authority to talk to CDK
25 on the topics outlined in the email below. Right?

1 MS. GULLEY: Objection; form.

2 A. Yes. That -- that is correct.

3 Q. (By Mr. Nemelka) And in the email that -- it's
4 an email that Howard Gardner sent to Mr. Schaefer. Now,
5 Howard Gardner is the CDK executive, right?

6 A. I'm aware of the fact that he works for CDK.
7 Whether or not he's considered an executive, I'm not --
8 I'm not familiar.

9 Q. And here -- the first bullet point he says,
10 "Bob Brockman would like to work toward an agreement
11 with ADP, and he has granted you the authority to pursue
12 discussions on a general framework with ADP." Do you
13 see that?

14 MS. GULLEY: Objection; form.

15 A. Yes, I do.

16 Q. (By Mr. Nemelka) And that's the authority that
17 you have been granting Mr. -- that you granted
18 Mr. Schaefer, right?

19 MS. GULLEY: Objection; form.

20 A. Yes. I gave him authority to discuss with ADP.
21 He does not have -- this does not give him permission to
22 actually do anything. It's permission to talk about
23 things.

24 Q. (By Mr. Nemelka) Right. And one of the -- if
25 you turn to the next page -- one of the things that --

1 permission to talk about is for OEMs -- if you will
2 look, "Reynolds & Reynolds and DMI will formalize and
3 extend our collaborative approach to helping OEMs
4 transition to a 'protected program' to prevent future
5 disruption of data access." Do you see that?

6 MS. GULLEY: Form.

7 A. Yes. And I think it's important to point out
8 that what's happening here is -- and that's that ADP's
9 two subsidiaries are the worst of the hackers and
10 bandits --

11 Q. Right.

12 A. -- that we face. And the efforts that we're --
13 we're pursuing here is -- and that's a continued
14 improvement of security by -- by, you know -- you know,
15 planned stand-downs.

16 Q. The next one, you say -- or here is "Non-OEM
17 Third Parties." So that would be, not car
18 manufacturers, but the other applications you referred
19 to, like, customer relationship management and so forth,
20 right?

21 MS. GULLEY: Form.

22 Q. (By Mr. Nemelka) For the non- -- No. 2,
23 "Non-OEM Third Parties"?

24 MS. GULLEY: Form.

25 A. Okay. We're now down to No. 2?

1 Q. (By Mr. Nemelka) "Non-OEM Third Parties." Do
2 you see that?

3 Mr. Brockman, do you see No. 2, "Non-OEM
4 Third Parties"?

5 A. Yes. I'm -- I'm trying to reabsorb that
6 paragraph. That's a very -- that's kind of a long
7 run-on paragraph.

8 Q. Well -- if I could just -- that's one reason
9 why you're -- you know -- I'd give you the opportunity
10 to read the whole document, but I ask you about specific
11 sections. It's more efficient if I could point you to
12 the sections, then I give you a chance to read the
13 whole -- whole thing. Now -- you know, reading the
14 whole thing really does eat up time -- of our limited
15 time here.

16 MS. GULLEY: I object to the form and
17 to the sidebar --

18 MR. NEMELKA: That's fine.

19 MS. GULLEY: -- and to the instruction as
20 improper.

21 MR. NEMELKA: Okay.

22 Q. (By Mr. Nemelka) So No. 2. "Non-OEM Third
23 Parties." Non-OEM third parties would be non-car
24 manufacturers. They're parties, right?

25 MS. GULLEY: Objection; form.

1 A. Yes. That would be a proper characterization.

2 Q. (By Mr. Nemelka) And it says here, R&I --
3 "R&R" -- Reynolds -- "and DMI will jointly create and
4 launch a 'protected program' that DMI will offer to its
5 existing and prospective non-OEM clients." Do you see
6 that?

7 MS. GULLEY: Objection; form.

8 A. Yes. I see that.

9 Q. (By Mr. Nemelka) So that -- DMI would have
10 protected access to data that Reynolds' dealers have,
11 not just for OEMs, but for non-OEM third parties, too;
12 correct?

13 MS. GULLEY: Objection; form.

14 A. This is -- this is what ADP was asking for, and
15 I -- I think that, probably after this first
16 conversation, that they were brought to understand that
17 we were -- that -- that we were only going to allow
18 access for collection of data to go to specific
19 customers, not for Reynolds and DMI to, basically,
20 continue business as usual.

21 Q. (By Mr. Nemelka) And then Point 4,
22 "Exclusivity." Here there's a sentence that says,
23 Reynolds is -- "R&R is open to the R&R 'protected
24 programs' becoming an exclusive offering by DMI." Do
25 you see that?

1 MS. GULLEY: Objection; form.

2 A. Again, the -- this is Howard Gardner's wish
3 list.

4 Q. (By Mr. Nemelka) You gave Mr. Schaefer
5 authority to pursue these discussions, right, on these
6 topics?

7 MS. GULLEY: Objection; form.

8 A. Yeah. And "discussions" does not mean yes to
9 everything that -- that is being requested by Howard
10 Gardner. From a background standpoint, you need to
11 understand who Howard Gardner is.

12 Howard Gardner's baby is Digital Motor
13 Works, DMI. Again, one of the worst hackers and bandits
14 out there. There's no question what -- you know,
15 there's items in this list of things that he would like
16 to have continue. But we have no intention of -- of
17 allowing that to continue to happen.

18 Q. (By Mr. Nemelka) One of the topics that you
19 gave Mr. Schaefer authority to pursue discussions with
20 ADP on had to do with market message about -- market
21 messaging about data security, right?

22 MS. GULLEY: Objection; form.

23 A. I disagree. I -- I don't -- I don't think
24 that -- that that's the case.

25 Q. (By Mr. Nemelka) If you look at the last

1 section here, "Market Messaging -- Data Security." Do
2 you see that?

3 MS. GULLEY: Objection; form.

4 A. Again, this is -- this is Howard Gardner's wish
5 list.

6 Q. (By Mr. Nemelka) I'm simply reading your
7 email, Mr. Brockman. You just wrote to Mr. Schaefer,
8 "You have authority to pursue discussions with ADP on
9 these subjects."

10 MS. GULLEY: Objection.

11 Q. (By Mr. Nemelka) You wrote that to
12 Mr. Schaefer, right? You saw that?

13 MS. GULLEY: Objection to the question and
14 the instruction.

15 A. The instructions that I gave to Mr. Schaefer is
16 on a general basis. He could -- he could discuss these
17 general areas. It did not have anything to do with what
18 we were going to agree to.

19 Q. (By Mr. Nemelka) And one of those topics was
20 market messaging on data security; correct?

21 MS. GULLEY: Objection; form.

22 A. That -- that was one of the items on Howard
23 Gardner's wish list.

24 Q. (By Mr. Nemelka) And you authorized
25 Mr. Schaefer to talk to CDK about that, right?

1 MS. GULLEY: Objection; form.

2 A. What I authorized Mr. Schaefer to do was --
3 that he could discuss in general terms, generally, this
4 list. Not every specific item.

5 Q. (By Mr. Nemelka) Now, as you're having -- as
6 Reynolds is having these -- you can set that aside. As
7 Reynolds is having these discussions with CDK, you were
8 holding off on security enhancements that would -- that
9 you wanted to release, right?

10 MS. GULLEY: Objection; form.

11 A. There were a series of security enhancements
12 which were much improved in their capabilities, and we
13 wanted to deploy these -- these security enhancements.
14 But we did not want to do it that it would cause, kind
15 of, Armageddon kind of situation, where all of a sudden
16 ADP's customers would not get what their contracts
17 called for.

18 Q. (By Mr. Nemelka) You said that these security
19 enhancements were much improved in their capabilities.
20 Is that in their capabilities in blocking this access by
21 independent integrators?

22 MS. GULLEY: Objection; form.

23 A. Again, I -- I, first of all, take issue with,
24 you know, the characterization of independent
25 integrators. You know, if you mean hackers and bandits,

1 yes, that's what they're intended to do.

2 Q. (By Mr. Nemelka) Mr. Brockman, you used
3 Authenticom for your own products, didn't you?

4 MS. GULLEY: Objection; form.

5 (By Mr. Nemelka) We already established
6 that, right?

7 MS. GULLEY: Form.

8 A. Yes. But on a temporary basis and very, very
9 minor.

10 Q. (By Mr. Nemelka) So you used a hacker and a
11 bandit for your own products?

12 MS. GULLEY: Objection; form.

13 A. I used Authenticom to do a specific process,
14 with the knowledge of the dealer and with our knowledge.

15 Q. (By Mr. Nemelka) All right. So these security
16 enhancements that were much improved, much improved in
17 what?

18 MS. GULLEY: Objection; form.

19 A. In their ability to detect unauthorized use --
20 use of our software.

21 Q. (By Mr. Nemelka) Unauthorized use of the --
22 meaning by integrators to access dealer data?

23 MS. GULLEY: Objection; form.

24 A. What we're talking about is -- and that's we're
25 talking about, you know, very, very high-level, you

1 know, software enhancements to detect, you know, people
2 coming into the -- the system that -- who we know
3 nothing about. They're, you know, completely
4 unauthorized. That's what we're talking about.

5 Q. (By Mr. Nemelka) And you held off on releasing
6 those until you concluded your negotiations with CDK,
7 right?

8 MS. GULLEY: Objection; form.

9 A. The exact timing of -- of that, you know, when
10 we released the -- those enhancements -- I might add
11 that it's -- it's clear that the enhancements are not
12 necessarily released all at once. They're -- they're
13 not a single thing.

14 You know, there -- there's a series of what
15 we call "fixes" or "enhancements," and probably some of
16 them we turned loose earlier than others. They
17 weren't -- it's not a simultaneous, you know,
18 distribution of software enhancements.

19 Q. (By Mr. Nemelka) Reynolds held up on a large
20 release of security enhancements during the negotiations
21 with CDK; correct?

22 MS. GULLEY: Objection; form.

23 A. Again, I don't know that it was all the
24 security enhancements that we had prepared. Certainly,
25 there were a number of them.

1 Q. (By Mr. Nemelka) I'm going to hand you
2 Plaintiff's Exhibit 642.

3 (Exhibit 642 was marked for
4 identification.)

5 Q. (By Mr. Nemelka) And, Mr. Brockman, I'll
6 represent to you that your counsel produced this. And
7 the metadata as produced says this came from your file.
8 And it's dated June 23rd, 2014. I'll give you a chance
9 to review it. There's a back page as well.

10 A. Oh, okay.

11 Q. Mr. Brockman, these are your notes; correct?

12 A. Yes.

13 Q. And you prepared these notes -- sorry.

14 A. This is a -- what I would refer to as a
15 "talking paper." It is a -- a series of points that I
16 want to make in a conversation with Steve Anenen.

17 Q. And one thing that you told him at the very
18 back, if you turn over to the second page, is that "We
19 have held up on a large release of security enhancements
20 for over 2 months to see if there was a deal to be
21 worked out." Do you see that?

22 A. Yes. I -- I see that. And that was a very
23 important point of -- of a call, that we had a number of
24 security enhancements that would -- would basically
25 block the kind of access that -- that they -- they had

1 been using to get into our systems.

2 Q. And you had been holding that up?

3 A. Yes.

4 MS. GULLEY: Objection; form.

5 Q. (By Mr. Nemelka) And -- and that would -- the
6 security enhancement would block, not just DMI and
7 Integra Link!, but other integrators; correct?

8 MS. GULLEY: Objection; form.

9 A. That's an interesting issue. When we see
10 things happening where people are breaking into our
11 system, we have no idea who they are in most cases.
12 There's no -- they don't have a signature on everything
13 that says who they are when they come in. We just know
14 that, you know, they're hacking their way in, and we're
15 going to block it. In some cases, that would cover
16 things that the ADP subsidiaries were doing. And in
17 some cases, it might uncover people that we had no idea
18 were -- were hacking into our systems.

19 Q. (By Mr. Nemelka) You understand for DMI and
20 Integra Link! and Authenticom, it was the Reynolds
21 dealers that were providing them that access; correct?

22 MS. GULLEY: Objection; form.

23 A. From -- when you say "providing that access,"
24 you know, what -- what the Reynolds dealer would do is
25 -- and that's that they would give them a user ID to get

1 in, which is completely contrary to the terms of their
2 contracts. Our contracts with our dealers specifically
3 say, you know, no authorized -- or, no use or access to
4 our software other than employees, you know, is -- is
5 permitted. Unfortunately, dealers are, you know,
6 somewhat cavalier about following that particular term
7 of their contract.

8 Q. (By Mr. Nemelka) And -- and they granted that
9 access so that they could -- they granted that --
10 that -- those user IDs to be used to access the dealer
11 data; correct?

12 MS. GULLEY: Objection; form.

13 A. That's effectively what -- what would happen.
14 You know, the dealer has, you know, very powerful
15 reporting tools where they could do that themselves.
16 But this is for remote unattended access.

17 Q. (By Mr. Nemelka) All right. Let's go to the
18 first page. You have -- let's go to where you say, "The
19 second point is very much a personal one." Do you see
20 that, about midway through the -- down -- down through
21 the page? Midway, halfway, it says, "The second point
22 is very much a personal one." Do you see that?

23 A. Yes.

24 Q. Okay. Right under there, you say, "ADP has
25 been extracting data out of Reynolds systems for over a

1 decade." Do you see that?

2 A. Yes. I do.

3 Q. And you knew that ADP was in the business of
4 providing that data to a host of other third parties,
5 right?

6 MS. GULLEY: Objection; form.

7 A. That -- that's my assumption. I -- I don't
8 have direct knowledge of that.

9 Q. (By Mr. Nemelka) And then you say, "ADP has
10 wrongly taken advantage of Reynolds in the marketplace
11 over the issue of data security -- that has cost us in
12 the millions." Do you see that?

13 A. Yes, I do.

14 Q. How was CDK taking advantage of Reynolds in the
15 marketplace on the issue of data security?

16 MS. GULLEY: Objection; form.

17 A. ADP's posture in the marketplace was that our
18 approach and our -- our -- you know, our belief that
19 data security is necessary because of the fact that we
20 have nonpublic personal information that -- that exists
21 inside of the Reynolds system, that that manner of
22 access, we think, is the right way to do things. We
23 think that's what's required by law.

24 ADP, from a sales standpoint, their
25 salespeople, would say that we're taking the wrong

1 position on the data security standpoint. And we
2 believed that that was harmful to us in the marketplace.

3 Q. (By Mr. Nemelka) And it cost you in the
4 millions because you lost DMS customers as a result?

5 MS. GULLEY: Objection; form.

6 A. That -- that is correct. And to -- to lose a
7 customer over data security when we're doing things the
8 right way, the way that's required by law, you know, for
9 them to decide to switch their business to ADP, that's
10 obviously hurt.

11 Q. (By Mr. Nemelka) You know that other DMSs,
12 besides Reynolds and CDK, do not take the same view that
13 you do; correct?

14 MS. GULLEY: Objection; form.

15 UNIDENTIFIED SPEAKER: Objection; form.

16 A. I believe that they take views that are -- that
17 are different than ours.

18 Q. (By Mr. Nemelka) Are you saying that they are
19 in violation of the law?

20 A. I believe that the -- what's required by
21 Gramm-Leach-Bliley Act and also the Safeguards Rules --
22 I believe that they're not following those, you know,
23 laws correctly.

24 Q. So you say it cost you -- the CDK wrongly
25 taking advantage of Reynolds in the marketplace over the

1 issue of data security cost you millions because you
2 lost DMS customers. Any other way that it cost Reynolds
3 millions, besides losing DMS customers?

4 MS. GULLEY: Objection; form.

5 A. I would say that the -- that it wouldn't
6 necessarily be just the loss of customers, it would also
7 have to do with our ability to acquire new customers.
8 And it is -- you have to understand, we've been -- I
9 personally have been, you know, bitter competitors, you
10 know, with ADP for a very, very, very long time, in
11 excess of 40 years. And this was one of the things that
12 irritated me specifically.

13 The software that I helped create, the
14 Power system in Houston, is extremely, you know, strong
15 in its data security. And from the time that I, you
16 know, came aboard at Reynolds and Reynolds, we've been
17 working to improve our data security. And it is vastly
18 improved from when I first -- you know, first arrived 12
19 years ago.

20 It's still not perfect, because people
21 think that -- you know, more, you know, inventive ways
22 of doing it. And it's very much a cat-and-mouse
23 situation in that the hackers figure out a new way and
24 then we figure out a way to block it. And then they
25 figure out another new way and we figure out a way to

1 block it.

2 Q. (By Mr. Nemelka) Now, you say at the -- here,
3 "Therefore, I want" -- "I want a no-charge access to ADP
4 systems for the next 20 years." So you wanted free
5 access for the Reynolds applications for the next 20
6 years, but not to extract data for other third parties,
7 like DMI and Integra Link!, right? You made that clear.
8 And that was a difference?

9 MS. GULLEY: Objection; form.

10 UNIDENTIFIED SPEAKER: Objection; form.

11 A. There -- I think this particular passage
12 indicates the level of differences between -- when I say
13 "differences" -- you know, points of contention between
14 us and ADP. And it is specific in that -- we have
15 applications, for instance, like reminder cards for
16 service, that an ADP dealership, they would like to buy
17 that product from us, and we would have specific
18 certified access into the ADP system to get just the
19 data that it takes to do reminder cards.

20 Q. (By Mr. Nemelka) So you wanted 20 free years
21 of that type of access to this CDK dealer data; correct?

22 MS. GULLEY: Objection; form.

23 A. Well, it says "no-charge access." That means
24 no charge by ADP. That we would basically -- as long as
25 we used it strictly for a product that we offered, like

1 service reminders, that we would have free access for 20
2 years.

3 Q. (By Mr. Nemelka) And what did you mean when
4 you told him here that "not to be used to extract data
5 for other 3rd parties"?

6 MS. GULLEY: Objection; form.

7 A. We are not -- never have been -- and have no
8 intention of being in the process of extracting data
9 from other dealership systems for the purposes of
10 reselling. We don't do that.

11 Q. (By Mr. Nemelka) Like DMI and Integra
12 Link! did?

13 A. We don't do that.

14 Q. You were considering entering into a joint
15 venture with CDK on that, though, as we saw earlier.
16 Correct?

17 MS. GULLEY: Objection; form.

18 A. No. That's not true. That -- that's not true.
19 Our -- our whole discussion with ADP was about an
20 orderly stand-down transition, to avoid creating
21 hardships for what is our mutual customers.

22 Q. (By Mr. Nemelka) And here -- did you tell
23 Mr. Anenen that you had no intention of ever entering
24 into the business like DMI and Integra Link!?

25 MS. GULLEY: Objection; form.

1 A. I don't think I made a -- a general statement
2 of that. I think it's pretty clear, it says, "like
3 service reminders -- not to be used to extract data for
4 other 3rd parties." So that comment was directly in
5 relationship to the access that we would be granted by
6 ADP.

7 Q. (By Mr. Nemelka) I've handed you Plaintiff's
8 Exhibit 643.

9 (Exhibit 643 was marked for
10 identification.)

11 Q. (By Mr. Nemelka) The top email is an email
12 from Steve Anenen to you, dated July 2nd, 2015. I'll
13 give you a chance to read it. But again, Steve Anenen
14 is CDK's CEO, right?

15 A. That's correct.

16 Q. And this is an email to you, July 2nd, 2014.
17 I'll give you a chance to -- to review it.

18 MS. GULLEY: It starts on the back.

19 Q. (By Mr. Nemelka) Right. It starts off with an
20 email from you on June 30th, to Mr. Anenen; correct?
21 Mr. Brockman?

22 A. Just -- just a moment. Let me -- let me read
23 it. Yes, I've read it. Can you repeat your question?

24 Q. All right. So this starts off with an email
25 from you to Mr. Anenen, dated June 30, 2014, right?

1 A. That's correct.

2 Q. And this follows up a conversation that you had
3 with him; correct?

4 MS. GULLEY: Form.

5 A. Yes. That is correct.

6 Q. (By Mr. Nemelka) And those were the -- the
7 talking points for that conversation is the document
8 that we just -- just looked at; correct?

9 MS. GULLEY: Objection; form.

10 A. Yes. That -- that's correct. And as you can
11 tell by the tone of this email, I'm getting a little
12 impatient.

13 Q. Right.

14 A. More than a little impatient.

15 Q. Right. You write here at the end, "My data
16 security projects have been delayed another week."
17 Right?

18 A. Yes. That's what it says.

19 Q. You're still delaying the -- the data security
20 projects since June 30th, 2014, right?

21 MS. GULLEY: Objection; form.

22 A. That's the date of this email. What's
23 happening is -- and that's that Steve Anenen is
24 employing delay tactics. And I'm impatient to get this
25 situation of, you know, data hacking, bandits, going on

1 as far as our system is concerned. It's time for it to
2 be over.

3 Q. (By Mr. Nemelka) And you write to him, also --
4 still your email, Mr. Brockman. "However given that ADP
5 has accessed our systems for a couple of decades, my
6 request is for more than just data access than for
7 maintenance reminders -- both in content and duration."

8 So you -- here, you're saying, because CDK
9 accessed your systems for a long time, your request here
10 for free access is more than just for maintenance
11 reminders, right?

12 MS. GULLEY: Objection; form.

13 A. It is for other software products that -- that
14 we might offer to the marketplace. But still under the
15 certified interface process --

16 Q. (By Mr. Nemelka) Right.

17 A. -- where it's clearly spelled out by contract,
18 you know, what data that we -- we get and nothing else.

19 Q. And then I want to ask you about what
20 Mr. Anenen says to that statement in particular, if you
21 go to his email.

22 MS. GULLEY: I don't -- I don't think he
23 read this first page.

24 MR. NEMELKA: I'm not going to ask about
25 anything but this one email -- but this one paragraph.

1 Q. (By Mr. Nemelka) He says --

2 MS. GULLEY: I object to that.

3 MR. NEMELKA: Okay. I just want to point
4 you to this one -- one paragraph that Mr. Anenen writes
5 in response to that statement.

6 MS. GULLEY: I object to that.

7 THE WITNESS: I would like to read the
8 email, please.

9 MR. NEMELKA: Okay.

10 MR. RYAN: So my -- my complaint is that
11 the procedure is that if the witness wants to read the
12 document, the witness can, right? That's certainly been
13 the case in depositions of the witnesses that you
14 represented. I just want to know what the ground rules
15 are.

16 MR. NEMELKA: If it's going to be
17 obstructionist, then we'll do it document by document.
18 I will let him read this email.

19 MS. GULLEY: I object to that comment as
20 well.

21 MR. NEMELKA: While he's reading, I'll just
22 state for the record, we've been given limited time,
23 here. I think it's fair to direct him to particular
24 points in a -- in a document. I'm giving him a chance
25 to read them. If they are longer documents, I think

1 it's fair for us to direct him, for efficiency purposes.
2 If you want to take your time and ask him about other
3 parts of the document, you're free to.

4 MS. GULLEY: Mr. Nemelka, you have called
5 opposing counsel inappropriate for making statements on
6 the record like the one that you just made. I
7 completely object to your statement.

8 I also ask -- direct you to look into the
9 depositions that you have defended and that your
10 partner, Mr. Ho, has defended, in which he hasn't even
11 allowed counsel to use the time that they have on the
12 record. Everyone has the same amount of time, and
13 this -- this -- the desire to read documents is one that
14 you instructed your clients, repeatedly, on the record.

15 And if Mr. Brockman suggests that he would
16 like to read the document -- you're asking him to opine
17 on statements by Mr. Anenen -- he should at least be
18 allowed to read those statements, given that they were
19 more than four years ago.

20 MR. NEMELKA: You've gone beyond what's
21 appropriate, Andi, but I'll get back to questioning.

22 Q. (By Mr. Nemelka) All right, Mr. Brockman, I'd
23 like to ask you about --

24 THE WITNESS: Excuse me. I didn't finish
25 reading. The amount of conversation that's been going

1 on across the table, I haven't had a chance to read.

2 MR. NEMELKA: Okay.

3 MS. WEDGWORTH: Can we go off the record a
4 minute? Mr. Wallner has informed us the phone is not --
5 has been disconnected. Can we go off the record?

6 THE VIDEOGRAPHER: The time is 11:37 a.m.
7 We are off the record.

8 (Short recess 11:37 to 11:50 a.m.)

9 THE VIDEOGRAPHER: This is the beginning of
10 Media 2. The time is 11:50 a.m. We are back on the
11 record.

12 EXAMINATION (Continuing)

13 BY MR. NEMELKA:

14 Q. Mr. Brockman, I'd like to point you to the
15 email that you received from Mr. Anenen on July 2nd,
16 2014. Do you have that in front of you?

17 A. I do.

18 Q. And he wrote to you -- in the paragraph after
19 his bullet points, he said, "I should point out that we
20 have not been 'accessing R&R systems for decades' as you
21 said. Our businesses that access R&R systems came to us
22 through an acquisition." Do you see that?

23 MS. GULLEY: Form.

24 A. Yes, I do.

25 Q. (By Mr. Nemelka) And then he says, "In any

1 case, controlling data access has become a priority for
2 R&R only within the last several years. I would be
3 remiss not pointing out that R&R is accessing the ADP
4 system through a contract with Authenticom, and has been
5 doing so for quite some time without an agreement from
6 ADP."

7 Is Mr. Anenen correct in that, that -- that
8 Reynolds was accessing the ADP system through a contract
9 with Authenticom?

10 MS. GULLEY: Objection; form.

11 A. Well, there are some things that I -- I
12 disagree with in -- in this paragraph, starting with the
13 first sentence. I believe that when you acquire a
14 company and you make it part of your organization, that,
15 you know, the history of that company kind of goes with
16 it and becomes part of your history. And for him to,
17 you know, basically say that because DMI and Integra
18 Link! are organizations they acquired, you know, that
19 doesn't count. I believe it does count.

20 Q. (By Mr. Nemelka) That wasn't my question,
21 Mr. Brockman. My question was: Is he correct in
22 pointing out that R&R is accessing that CDK system
23 through a contract with Authenticom?

24 MS. GULLEY: Objection; form.

25 A. Yes. I'm -- I concur with that -- comma --

1 however, there is an issue of degree here. What's been
2 going on -- what ADP has been doing as far as, you know,
3 hacking our systems has been on -- on a giant scale,
4 whereas the -- the agreement with Authenticom for
5 information from CDK's systems, specifically around
6 reminder cards, is -- is min- -- minuscule. And what
7 he's doing is -- and that's, you know, this -- this is a
8 negotiation -- a pretty heated negotiation, frankly --
9 or at least kind of heated on my part -- and that he's
10 endeavoring to dodge around.

11 Q. (By Mr. Nemelka) You wouldn't have used
12 Authenticom if they were insecure, would you have?

13 MS. GULLEY: Objection; form.

14 A. For reminder cards, you know, there's no
15 nonpublic personal information. There's no accounting
16 information. It -- again, it is -- it's not an
17 application that's sensitive.

18 Q. (By Mr. Nemelka) Reynolds used Authenticom for
19 more than just those reminders, right?

20 MS. GULLEY: Objection; form.

21 A. I think that they started to do some work for
22 the -- the ad agency.

23 Q. (By Mr. Nemelka) Right. Naked Line Marketing,
24 right?

25 MS. GULLEY: Objection; form.

1 A. Yes. That's the name of our ad agency.

2 Q. And Naked Line does have information -- does
3 get information on customers; correct?

4 MS. GULLEY: Objection; form.

5 A. Again, the usage of -- that usage is -- has
6 been extremely minor.

7 Q. (By Mr. Nemelka) Again, you would not have
8 used Authenticom if they were insecure, right?

9 MS. GULLEY: Objection; form.

10 A. As far as I know, there's been -- there was no
11 inquiry made with regards to their internal security
12 procedures.

13 Q. (By Mr. Nemelka) You're not aware of any data
14 breaches that they've had, right?

15 MS. GULLEY: Objection; form.

16 A. Not that I'm aware of.

17 Q. (By Mr. Nemelka) They provided a reliable
18 service; correct?

19 MS. GULLEY: Objection; form.

20 A. And I'm not involved in -- in that part of our
21 business. It's -- I'm not in -- in a position to say
22 whether it's reliable or not.

23 Q. (By Mr. Nemelka) It's cost-effective for
24 Reynolds to use Authenticom, right?

25 MS. GULLEY: Objection; form.

1 A. Again, I'm -- I'm not sufficiently involved in
2 that part of the business to be able to comment on that.

3 Q. (By Mr. Nemelka) And then he writes at the end
4 of that paragraph, "We need to clean this up as well."
5 And you understood that to mean that Reynolds needed to
6 stop using Authenticom, right?

7 MS. GULLEY: Objection; form.

8 A. Frankly, I don't recall that I've ever focused
9 on that -- on that sentence. It's a little short one,
10 kind of down at the end of the whole thing. And so --

11 Q. (By Mr. Nemelka) What do you understand him to
12 mean by saying, "We need to clean this up as well"?

13 MS. GULLEY: Objection; form. Please let
14 him finish his answers.

15 A. It is -- it is not clear to me what that means
16 and, frankly, when I received this, I didn't pay much
17 attention to that, you know, little short sentence in
18 the next-to-the-last paragraph.

19 Q. (By Mr. Nemelka) Reynolds ultimately did agree
20 to stop using Authenticom as part of its agreements with
21 CDK, right?

22 MS. GULLEY: Objection; form.

23 A. I -- I know that -- that we stopped using
24 Authenticom. Whether it was part of the -- of the
25 stand-down agreement, I'm not sure.

1 (By Mr. Nemelka) I've handed you an
2 exhibit marked Plaintiff's Exhibit 644.

3 (Exhibit 644 was marked for
4 identification.)

5 Q. (By Mr. Nemelka) And I will represent to you
6 that this was produced to us by your counsel from your
7 custodial files, with a date of July 14th, 2014. And
8 the file name was "Aspen Meeting 2014 State of the
9 Union." And I'm only going to ask you about two
10 sections.

11 So it's a multipage state of the union
12 notes. So do you -- do you recognize these as your --
13 your notes for a state of the union meeting?

14 MS. GULLEY: Form.

15 A. The context of this is -- and that's we have an
16 annual meeting of sales -- you know -- vice-presidents,
17 and we discuss a number of issues of general interest.

18 Q. (By Mr. Nemelka) Okay. If I could just point
19 you to the section on "Security," on the next page.

20 MS. GULLEY: Objection.

21 A. Well, I think that this -- this is a big
22 document. I think I would prefer to, you know, spend a
23 little more time on it than that. I -- I hesitate to,
24 essentially, take things out of context.

25 Q. (By Mr. Nemelka) All right. I don't intend on

1 taking anything out of context. I'm just going to ask
2 you about the sections on security. But -- you know, it
3 is a long document. And I don't intend on asking you
4 about most of it.

5 I guess, can I just ask you, first of
6 all -- maybe I'll just do it this way. Do you recognize
7 these as your -- your speaking notes for that -- for
8 that address?

9 MS. GULLEY: Form.

10 A. These were, you know, talking points. They
11 covered a number of issues of interest, a lot of which
12 are related.

13 Q. (By Mr. Nemelka) I'll -- maybe if I could just
14 ask you the questions on security, and if you feel like
15 you need to review the rest of it to answer them,
16 then -- then I'll give you the chance. But if I could
17 just try to -- you know, make this more efficient by
18 pointing you to the security section?

19 MS. GULLEY: Objection; form.

20 A. I think to make -- to make an intelligent
21 decision as of what to do, I need to read it first.

22 MR. NEMELKA: All right. Well, while you
23 do that, let's go off the record.

24 MS. GULLEY: Objection. We are staying on
25 the record. That's just the procedure that's been

1 followed by Kellogg, so I'm just trying to make it, you
2 know, sort of goose/gander.

3 MR. NEMELKA: All right. We have a jury
4 that's going to be watching this. And I would just like
5 to state for the record, I've asked him to -- only asked
6 him for a few questions to make this efficient. But he
7 wants to review the whole -- whole documents. He's
8 recognized that -- he's acknowledged that these are
9 speaking notes for -- for that meeting. And with that
10 statement, Mr. Brockman, you can review the document.

11 MS. GULLEY: I object.

12 MR. RYAN: I object as well.

13 THE WITNESS: I'd like to speak to my
14 attorney about this document.

15 MR. NEMELKA: Okay.

16 MS. GULLEY: Does it relate to a matter of
17 privilege -- potential privilege?

18 THE WITNESS: This is very, very sensitive
19 information. You know --

20 MS. GULLEY: Is there a question pending
21 right now? So we can go off the record? There is not.
22 There is not a question pending.

23 MR. RYAN: There is no question.

24 MS. GULLEY: Okay. Thanks. Let's go off
25 the record.

1 THE VIDEOGRAPHER: The time is 12:01 p.m.
2 We're off the record.

3 (Short recess 12:01 to 12:02 p.m.)

4 THE VIDEOGRAPHER: Back on the record at
5 12:02 p.m.

6 MS. GULLEY: Thank you for that short
7 break. Mr. Brockman had a question about the protective
8 order. And in light of the sensitive nature of this
9 document, we ask that I remind everyone that this has
10 been marked "Attorneys' Eyes Only," that this entire
11 deposition is "Attorneys' Eyes Only." In particular, to
12 remind Mr. Ryan that executives within his company and
13 all the parties are not to know about or be told about
14 any of this document or the subject of this testimony.
15 Thank you.

16 EXAMINATION (Continuing)

17 BY MR. NEMELKA:

18 Q. Can I ask you some questions now, Mr. Brockman?

19 A. I'm almost done reading it.

20 Q. Okay.

21 A. Yes.

22 Q. If you can go to the section on "Security,"
23 which is on the -- after the first page, on the back of
24 the first page. Do you see that bottom-of-the-page
25 section on Security?

1 A. Yes.

2 Q. I want to ask you about a few bullet points
3 that start with "ADP" -- and CDK -- "has approached us
4 about doing the same -- we are in the early stages of
5 negotiating a similar agreement." Do you see that?

6 A. Yes. I see that.

7 Q. So is it CDK that approached Reynolds about
8 entering into an agreement with respect to its -- its
9 data access on Reynolds system?

10 MS. GULLEY: Form.

11 A. It's hard for me to -- to recall exactly how
12 that, you know, came about, because I was not the first
13 person to actually talk, you know, to CDK. And whether
14 or not one of their people talked to one of our people,
15 or one of our people talked to one of their people, I --
16 I don't know the answer to that.

17 Q. (By Mr. Nemelka) At least -- these notes,
18 though, you -- you seem to indicate that ADP has
19 approached "us," meaning CDK approached Reynolds, right?

20 MS. GULLEY: Form.

21 A. Yes. The -- that's what it says, but -- you
22 know, as far as my, you know, hard knowledge, you know,
23 behind that -- that statement, I don't have hard
24 knowledge as to what actually -- and frankly, I don't
25 think that's important.

1 Q. (By Mr. Nemelka) And then you write here,
2 fourth bullet point, "This could put the security wars
3 very much behind us." Do you see that?

4 MS. GULLEY: Form.

5 A. Certainly, those two entities that belong to
6 ADP are by far the worst and, matter of fact,
7 probably -- in total, probably the amount of data
8 hacking that goes on, they equal everybody else combined
9 and more.

10 Q. (By Mr. Nemelka) That wasn't my question. The
11 question here is: Do you see that you wrote that "This
12 could put the security wars very much behind us"? Do
13 you see that?

14 MS. GULLEY: Objection; form.

15 A. Yeah. What I'm talking about there is -- and
16 that's that, you know, the volume of hacking would be
17 substantially reduced.

18 Q. (By Mr. Nemelka) So you -- earlier this
19 morning, you said that you never used the phrase
20 "security wars." Does this refresh your recollection
21 that you actually do -- did?

22 MS. GULLEY: Objection; form.

23 A. Well, it -- it looks like that -- that I
24 actually have used it once. I will admit, it's in lower
25 case. And when I write documents like this, it's just

1 very much kind of stream of consciousness, because I'm
2 trying to give the best picture to the people that are
3 listening to it. Because they're my top people, and
4 also the most expensive people.

5 Q. (By Mr. Nemelka) And you felt that you had
6 been in a security war with CDK, right?

7 MS. GULLEY: Objection; form.

8 A. I definitely had been in -- I had long-term
9 issues with CDK over -- over, you know, just ban- --
10 plain old banditry as far as our system is concerned.

11 Q. (By Mr. Nemelka) This wasn't just about the
12 access of your system, though, this was also about CDK's
13 own policies, right?

14 MS. GULLEY: Objection; form.

15 A. It also included, you know, the fact that they
16 had outright lied to manufacturers about what data they
17 were extracting from our systems. And particularly,
18 General Motors. We discovered that they were fulfilling
19 a request by General Motors for data, and they were
20 talking to dealers saying, "This needs to be done
21 because it's General Motors." Well, the fact of the
22 matter is, they were collecting way more than what
23 General Motors ever asked for.

24 MS. GULLEY: Wait. Let him finish.

25 A. And so that is kind of -- the whole general

1 area is what I'm referring to.

2 Q. (By Mr. Nemelka) That's not what I asked.
3 What I'm saying is, this was not just about CDK's access
4 on the Reynolds system. It was also about CDK's own
5 policies with respect to access on the CDK system,
6 right?

7 MS. GULLEY: Objection to the form.

8 A. No. It was -- it was -- it refers to
9 situations where they were accessing dealership systems
10 on behalf of OEMs.

11 Q. (By Mr. Nemelka) The next bullet point, you
12 write, "Since we have no idea of how ADP is going to
13 charge 3rd parties for their version of RCI -- we will
14 likely continue to have the issue of customers
15 complaining that their costs from 3rd party vendors are
16 more expensive with a DMS from Reynolds than ADP."

17 I wanted to ask you: How did you know that
18 CDK would have a version of RCI, like you did?

19 MS. GULLEY: Objection; form.

20 A. I think at that point in time, it -- it
21 looked -- it had become apparent -- it wasn't done, but
22 it had become apparent that there was going to be a --
23 an orderly stand-down agreement with ADP. That's --
24 that's what I'm saying here.

25 Q. (By Mr. Nemelka) All right. I'm not talking

1 about the wind-down agreement. What you write is,
2 "Since we have no idea of how ADP is going to charge 3rd
3 parties for their version of RCI."

4 And my question is: How did you know that
5 CDK was going to have their version of an RCI?

6 MS. GULLEY: Objection; form.

7 A. I think at that point, we were also
8 understanding that we were going to be able to have RCI
9 access into ADP dealership customers, not for the
10 purposes of being a redistributor, but for the purposes
11 of using it within one of our product offerings. And
12 there was going to be a charge associated with that.

13 Q. (By Mr. Nemelka) Reynolds was going to be
14 getting five free years of access, no -- no charge to --
15 to Reynolds, right?

16 MS. GULLEY: Objection; form.

17 MR. RYAN: Objection; form.

18 A. That -- that was -- that was what ended up
19 being -- being part of the agreement. However, we had
20 no, you know, specific idea that our usage would be
21 limited to 600 dealerships. It -- it would be -- it
22 would be other products. You know, their -- this
23 marketplace is -- is constantly, you know, building more
24 products.

25 And actually, in, you know, looking back,

1 it's fortunate that we were able to achieve this kind of
2 access as part of the agreement, because we bought an
3 organization called Reverse Risk, which is a business
4 intelligence system that has over 1,000 dealerships that
5 are CDK dealerships, that through an RCI type agreement,
6 you know, with CDK, you know, we -- you know -- we
7 downloaded accounting information for the purposes of
8 making comparisons.

9 Q. (By Mr. Nemelka) That wasn't my question,
10 Mr. Brockman.

11 I'm asking you why, after you say it's
12 going to be an end to the security wars, you list that
13 ADP is going to have their own version of RCI? What is
14 the connection?

15 MS. GULLEY: Objection; form.

16 A. Again, I -- their -- their own version of RCI
17 is -- is part of what the stand-down agreement is all
18 about.

19 Q. (By Mr. Nemelka) You don't talk about -- in
20 that bullet point, you don't talk about the stand-down
21 agreement. You talk about third parties for their
22 version of RCI, right?

23 MS. GULLEY: Objection; form.

24 A. Well, again, I'm trying to tell you what I was
25 thinking about when I wrote this thing and what I was

1 trying to communicate.

2 Q. (By Mr. Nemelka) And I'm just saying I'm just
3 reading your words, "charge 3rd parties" -- not "charge
4 Reynolds" -- "charge 3rd parties for their version of
5 RCI."

6 MS. GULLEY: Objection; form.

7 Q. (By Mr. Nemelka) And so my question is --

8 MS. GULLEY: Let him finish his question.

9 THE WITNESS: Yeah.

10 Q. (By Mr. Nemelka) Go ahead and answer.

11 MS. GULLEY: Answer what?

12 Q. (By Mr. Nemelka) Mr. Brockman wants to talk.

13 MS. GULLEY: Just wait for a question.

14 MR. RYAN: Wait for a question.

15 Q. (By Mr. Nemelka) My question is -- is: You're
16 not talking about what -- what CDK is going to charge
17 Reynolds. You're talking about what CDK is going to
18 charge third parties for their version of RCI; correct?

19 MS. GULLEY: Objection; form.

20 A. In -- in that context, I believe that I'm, you
21 know, characterizing Reynolds as a third party.

22 Q. (By Mr. Nemelka) You're not talking about all
23 of the other vendors?

24 A. I -- I don't think that I'm -- I know,
25 specifically, that I'm talking about, at least,

1 Reynolds.

2 Q. Well, you go on, Mr. Brockman, "We will likely
3 continue to have the issue of customers complaining that
4 their costs from 3rd party vendors are more expensive
5 with a DMS from Reynolds than ADP." Are you referring
6 only to the Reynolds applications?

7 MS. GULLEY: Objection; form.

8 A. What I'm referring to is, in this, that, you
9 know, we get beat up in the marketplace over, you know,
10 third parties having to pay for a Reynolds-certified
11 interface, and it looks like -- it looks like the way
12 it's going is -- and that's that CDK is going to do it
13 the same way.

14 Q. (By Mr. Nemelka) All right. Let's go to the
15 first page. I want to ask you about a bullet point
16 here.

17 MS. GULLEY: I'm sorry. So we're on 644.
18 You're talking about something other than the "Security"
19 section?

20 MR. NEMELKA: Andi, make your objections.
21 I'm on the first --

22 MS. GULLEY: I'm trying to figure out --

23 MR. NEMELKA: I'm on the first page. I'm
24 on the first page. That's not what you're doing.

25 MS. GULLEY: Mr. Nemelka, I'm asking:

1 Are -- we're on the first page of what document?

2 MR. NEMELKA: The document that's right in
3 front of him, Andi.

4 MS. GULLEY: Could you identify the exhibit
5 for the record, please.

6 MR. NEMELKA: This is Exhibit 644.

7 MS. GULLEY: Thank you.

8 Q. (By Mr. Nemelka) Under the section on
9 "Acquisitions" -- since you read the whole document -- I
10 wanted to ask you about a sentence here where you write,
11 "We need to quit talking about DMS systems and focus on
12 RMS and the massive financial advantages of our
13 offering."

14 And my first question is: "RMS" stands for
15 Retail Management Ser- -- is that Retail Management
16 Services or Retail Management System?

17 MS. GULLEY: Objection; form.

18 A. Retail Management System.

19 Q. (By Mr. Nemelka) Okay. And you said you need
20 to -- and this is a speech to your salespeople; is that
21 right?

22 MS. GULLEY: Objection; form.

23 A. That's correct.

24 Q. (By Mr. Nemelka) And you say they -- they need
25 to quit talking about DMS systems and focus instead on

1 RMS. What did you mean by that?

2 MS. GULLEY: Form.

3 A. What I mean by that is -- and that's the DMS
4 systems are the -- the traditional, you know,
5 applications of -- of accounting, payroll, parts, you
6 know, service, finance, vehicle inventory, factory
7 communications. That is a suite of applications which
8 has been under long development and, frankly, it's
9 gotten to the point where it's so good that there's
10 nothing much more we can do to it. I know that sounds a
11 little strange but, I mean, that's the truth. The level
12 of requests we have for software enhancement in those
13 application areas is, you know, been kind of like this
14 (indicating) for a long time.

15 The retail management system takes into
16 consideration all of the other applications that
17 surround the DMS, which is under active development.
18 For instance, our docuPAD application and our imaging
19 systems, our advanced service products have been under,
20 you know, steady improvement. And we have considerable
21 competitive advantage in those areas. And so what I'm
22 encouraging them to do is -- and that's to not focus on,
23 you know, the older applications where we -- where
24 everybody is kind of caught up. To be focused -- to
25 focus, instead, on the retail management system, which

1 includes all of the other applications that integrate to
2 the central core applications.

3 Q. Thank you for that explanation.

4 (Exhibit 645 was marked for
5 identification.)

6 Q. (By Mr. Nemelka) I've handed you Plaintiff's
7 Exhibit 645. And if you recognize -- the top email is
8 an email from Mr. Schaefer to Ron Workman, dated January
9 6, 2015. But the chain starts with an email from you to
10 Mr. Brockman, also dated January 6, 2015. So do you
11 recognize this document?

12 A. I've got to -- I've got to read it. Okay.

13 Q. So I need to ask you about your email where you
14 write to Mr. Anenen -- this is now January 2015 -- "We
15 have held off on a series of major security enhancements
16 to our DMS systems at your request." So are these the
17 same security enhancements that we saw from 2014 that
18 Reynolds had been holding off on?

19 MS. GULLEY: Objection; form.

20 A. I'm sorry. I don't know what specific ones are
21 involved. I don't -- I'm not a programmer.

22 Q. (By Mr. Nemelka) But still -- Reynolds is
23 still holding off on security enhancements, though,
24 right?

25 MS. GULLEY: Objection; form.

1 A. They're -- that's what I was saying to Steve
2 Anenen in this -- in this email. There's no question --
3 you can tell my -- my frustration is increasing and, you
4 know, this is -- this is an or-else kind of email.

5 Q. (By Mr. Nemelka) Right. And you say, "We must
6 proceed with the release of our security enhancements."
7 You say that at the end, right?

8 A. That's correct.

9 Q. And these have been pending for a long time,
10 given the documents we've been looking at, right?

11 MS. GULLEY: Form.

12 A. That's correct. It's been a very frustrating,
13 you know, process.

14 Q. (By Mr. Nemelka) And the security enhancements
15 that you are going to release -- strike that.

16 MS. GULLEY: For the room, the lunch is
17 here.

18 MR. NEMELKA: I want to ask him about one
19 more document. It might be more than one.

20 (Exhibit 646 was marked for
21 identification.)

22 Q. (By Mr. Nemelka) I've handed you Plaintiff's
23 Exhibit 646, which is an email from Bob Schaefer to you,
24 Mr. Brockman, dated January 11, 2015. Do you recognize
25 receiving this email from Mr. Schaefer?

1 MS. GULLEY: Form.

2 A. Give me a chance to -- to read it. I'll be
3 with you shortly.

4 Q. (By Mr. Nemelka) Okay.

5 A. Okay.

6 Q. Okay, I want to ask you just about one issue
7 here that he references. First of all, do you recall
8 getting this email from Mr. Schaefer, Mr. Brockman?

9 A. Yes.

10 Q. And the -- an issue -- and it's about the
11 continuing negotiations between CDK and Reynolds;
12 correct?

13 MS. GULLEY: Form.

14 A. Yes.

15 Q. (By Mr. Nemelka) And an issue that -- I mean,
16 I've identified is -- I'm quoting -- "CDK committing to
17 NEVER accessing the Reynolds DMS again." Do you see
18 that at the bottom of the first page?

19 MS. GULLEY: Form.

20 Q. (By Mr. Nemelka) At bottom of the first page,
21 the very last line.

22 MS. GULLEY: Objection; form.

23 Q. (By Mr. Nemelka) Are you there with me,
24 Mr. Brockman?

25 A. I see that, and I'm -- and I'm looking at --

1 what the reply was.

2 Q. And --

3 MS. GULLEY: Objection; form.

4 Q. (By Mr. Nemelka) What Mr. Schaefer explains to
5 you is, is that -- and I want to ask you, Mr. Brockman,
6 about the next page, Mr. -- what Mr. Schaefer writes to
7 you about that issue. Second-to-last sentence of
8 that first paragraph up top, he says, "We have added" --
9 meaning Reynolds -- "have added after the 5 years they
10 cannot access the system on behalf of any 3rd party
11 forever." Do you see that?

12 MS. GULLEY: Form.

13 A. Yes.

14 Q. (By Mr. Nemelka) And that's what Reynolds
15 wanted, is for CDK to agree to never access the Reynolds
16 system again on behalf of any third party, right?

17 MS. GULLEY: Form.

18 A. That's certainly what we wanted to happen.

19 Q. (By Mr. Nemelka) And CDK said, at least --
20 current state of the negotiation was for five years.
21 We'll have this wind-down period, but after that, we
22 don't want to agree to the forever, right?

23 MS. GULLEY: Objection; form.

24 A. That -- that was my understanding. And this
25 whole -- I've not been involved at this level of detail

1 in this negotiation, which is basically formalizing what
2 the stand-down agreement consists of. And I know what
3 we asked for and -- and they're -- they're not agreeing.

4 Q. (By Mr. Nemelka) Okay. Reynolds was insisting
5 on forever never accessing. And CDK, at least, wanted
6 to keep that to five years, right?

7 MS. GULLEY: Objection; form.

8 Q. (By Mr. Nemelka) Right? What was that -- what
9 was the answer?

10 MS. GULLEY: Objection; form.

11 A. That's my understanding. That's what this is
12 all about.

13 Q. (By Mr. Nemelka) And in fact, in the wind-down
14 agreement, it is forever, right?

15 MS. GULLEY: Objection --

16 MR. NEMELKA: Let me finish answering my
17 question -- asking my question.

18 Q. (By Mr. Nemelka) In fact, it is forever,
19 correct, that CDK agreed to never access the Reynolds
20 system, right?

21 MS. GULLEY: Objection; form. This is
22 improper.

23 A. I would want to go look at that document, but I
24 don't believe it says that.

25 MR. NEMELKA: All right. Let's pull it

1 out.

2 (Exhibit 647 marked for identification.)

3 Q. (By Mr. Nemelka) Mr. Brockman, I've handed you
4 Plaintiff's Exhibit 647, which is the data exchange
5 agreement between CDK and Reynolds. And the first thing
6 I'm going to do is point you to where you -- you --
7 first of all, you signed this agreement, right, on
8 behalf of Reynolds?

9 MS. GULLEY: Objection; form.

10 A. Yes, I did.

11 Q. (By Mr. Nemelka) So let's go there. This is
12 on Page -- on Page 11 of 13. 11 of 13, do you see that,
13 Mr. Brockman, your signature there?

14 A. Yes.

15 Q. Dated February 18, 2015?

16 A. That's correct.

17 Q. And do you typically read contracts before you
18 sign them?

19 MS. GULLEY: Objection; form.

20 A. Umm, it depends. In this particular case, I
21 did not read this one extensively. I felt that the --
22 you know, this particular issue had -- or, you know, a
23 stand-down had -- had been, you know, worked on,
24 negotiated at length. And this one, I was ready to get
25 done. And so I was -- I had already made up my mind not

1 to go ask for any further changes and to agree to, you
2 know, what CDK wanted, just to get it off the table so I
3 could get on with the next project.

4 Q. (By Mr. Nemelka) Did you read this before you
5 signed it?

6 MS. GULLEY: Form.

7 A. I did not read it. I -- I -- I skimmed it.

8 Q. (By Mr. Nemelka) Okay. So let's go to Section
9 4.5. And the Section 4.5 is "Prohibition on Knowledge
10 Transfer and DMS Access." Do you see that?

11 MS. GULLEY: Form.

12 A. Yes, I see that paragraph.

13 Q. (By Mr. Nemelka) All right. And in this
14 paragraph, CDK and Reynolds agreed to two things.

15 MS. GULLEY: Form.

16 Q. (By Mr. Nemelka) Let's look at the first.
17 "Each of Reynolds and CDK further covenants and agrees
18 not to sell, transfer, or assign to any affiliate or
19 third party any technology, business process, or other
20 such knowledge regarding integration with the other
21 party's DMS or take any other steps to assist any person
22 that it reasonably believes to have plans to access or
23 integrate with the other party's DMS without other
24 party's written consent." Do you see that?

25 MS. GULLEY: Form.

1 A. Yes, I see that. And that -- that's a very
2 important provision.

3 Q. (By Mr. Nemelka) And -- and what --

4 MS. GULLEY: Objection.

5 Q. (By Mr. Nemelka) What did you agree to there?

6 MS. GULLEY: I'm sorry. Were you finished
7 answering the last question?

8 THE WITNESS: Would you please repeat the
9 last question?

10 Q. (By Mr. Nemelka) My question is -- is --
11 was -- was: Did you see that? You said, "Yes." So my
12 que- -- my pending question is: What did you agree to
13 there with CDK?

14 MS. GULLEY: Objection; form. He was not
15 done answering the last question before that.

16 A. Okay. What -- what's at work here is -- and
17 that's that as a result of the, you know, the
18 stand-down, you know, that -- to accomplish that, would
19 require, you know, knowledge of how access is gained
20 to a dealership system. And so what we're doing is --
21 and that's we're -- we're jointly agreeing with each
22 other that we will not turn loose any kind of knowledge
23 or technology that enables somebody to do that.

24 Q. All right. And then the next sentence is, "For
25 the avoidance of doubt, this Section 4.5 is not intended

1 as a 'covenant not to compete,' but rather as a
2 contractual restriction of access and attempted access
3 intended to protect the operational and data security
4 integrity of the Reynolds DMS and the CDK DMS and
5 protection of intellectual property."

6 And so my question is: It was a
7 contractual restriction of access that CDK and Reynolds
8 agreed to, right?

9 MS. GULLEY: Objection; form.

10 A. Well, okay. I'm not -- I'm not -- I'm not
11 seeing that here. What -- what's intended here is --
12 and that's that -- you know, what's happening is -- and
13 that's that, you know, we're going to gain knowledge
14 about how to get -- how to get into our systems, and
15 they're going to get some knowledge about how to get
16 into ours, okay? We're agreeing not to disseminate that
17 knowledge, okay?

18 And what we're further saying is -- is
19 look, you know, this is an IP protection provision. It
20 is not intended as a covenant not to compete, you know.
21 We're going to compete. But we're not going to -- we're
22 not going to share, you know, the IP to other third
23 parties or fourth parties, you know, as a result of --
24 of this agreement.

25 Q. (By Mr. Nemelka) Now, you just saw a document

1 where Mr. Schaefer said to you that -- and you testified
2 that Reynolds wanted CDK to agree to never access the
3 Reynolds DMS again, right?

4 MS. GULLEY: Objection; form.

5 MR. RYAN: Do you have an exhibit number?

6 A. There -- there -- that provision did not make
7 it into the final agreement, I don't believe.

8 Q. (By Mr. Nemelka) So what is this contractual
9 restriction of access that we're looking at here in 4.5?

10 MS. GULLEY: Objection; form.

11 A. It is not restriction of access. It's
12 restriction of the -- not to disseminate knowledge about
13 how to access.

14 Q. (By Mr. Nemelka) Mr. Brockman, it says --

15 A. It was --

16 Q. -- "contractual restriction of access and
17 attempted access." Correct?

18 MS. GULLEY: Objection; form.

19 A. But -- but if you look at the heading for 4.5,
20 it's "Provision on Knowledge Transfer" --

21 Q. Finish reading the -- the --

22 MS. GULLEY: Objection; form.

23 A. -- "and DMS Access."

24 MR. NEMELKA: Let -- let me finish my
25 question.

1 Q. (By Mr. Nemelka) Please finish reading the
2 entire title of 4.5, Mr. Brockman.

3 MS. GULLEY: Objection; form. Just give me
4 a chance to object, Mr. Brockman.

5 A. It says "Prohibition on Knowledge Transfer and
6 DMS Access."

7 Q. (By Mr. Nemelka) All right.

8 A. And -- and you know, what -- what it's intended
9 to mean is -- and that's that each party is going to
10 have access to intellectual property of the other and
11 that we're both jointly, you know, agreeing not to
12 disclose that. But, you know, it's not intended to be a
13 covenant not to compete. It's -- it's simply an issue
14 of intellectual property.

15 Q. After covenant not to compete -- compete, it
16 doesn't say it's simply an issue of intellectual
17 property, does it?

18 MS. GULLEY: Objection; form.

19 A. Yeah, I -- I think the 4.5 heading, you know,
20 goes a long ways towards accomplishing that.

21 Q. (By Mr. Nemelka) 4.5 heading says "Prohibition
22 of Knowledge Transfer and DMS Access"; correct?

23 MS. GULLEY: Objection; form.

24 A. I believe that -- I believe that that's all one
25 issue. It's not two separate issues.

1 Q. (By Mr. Nemelka) Prohibition on DMS access?

2 MS. GULLEY: Objection; form.

3 A. I believe it's prohibition on knowledge
4 transfer. Yeah, that's what it's all about.

5 Q. (By Mr. Nemelka) But there's an "and" there,
6 isn't there?

7 MS. GULLEY: Objection; form.

8 A. I'm sorry. I have to plead a little bit that
9 I'm not a lawyer like you are, and -- and, you know,
10 this document has got lots of words in it. And I do not
11 believe that that was the intent of the drafter.

12 Q. (By Mr. Nemelka) Even though -- well, if we go
13 back to the document where -- well, this is -- what you
14 testified is that CDK agreed not to access for five
15 years. It was just the "forever" part that they didn't
16 agree to, right?

17 MS. GULLEY: Objection; form. What's the
18 exhibit, as Mr. Ryan asked a while back.

19 MR. NEMELKA: 646.

20 Q. (By Mr. Nemelka) I'm reminding Mr. Brockman of
21 his testimony.

22 MS. GULLEY: Objection. That is not
23 correct. Objection to that statement.

24 Q. (By Mr. Nemelka) It says here, that we just
25 saw, "We have added" -- as we've -- as we've already

1 done, "We have added after the 5 years they cannot
2 access the system on behalf of any 3rd party forever."

3 Do you recall that?

4 MS. GULLEY: Objection; form.

5 A. That -- that's what it says. That's what we're
6 asking for. We did not get that provision.

7 Q. (By Mr. Nemelka) Are you aware of how long
8 Section 4.5 lasts?

9 MS. GULLEY: Objection; form.

10 A. Again, I'll confess that I'm not an attorney
11 and I -- you know, as far as the duration of provisions,
12 I don't know what it says.

13 Q. (By Mr. Nemelka) All right. Let's go to
14 Section 6.1 of the agreement. Are you there with me?
15 6.1?

16 A. I'm sorry. I thought I was.

17 Q. Are you there with me?

18 A. Yes.

19 Q. "With the exception of the obligations set
20 forth in Sections 4.5" -- that was the section we were
21 just looking at, right, Mr. Brockman?

22 MS. GULLEY: Objection; form.

23 Q. (By Mr. Nemelka) 4.5 is the section we were
24 just looking at; correct?

25 MS. GULLEY: Form.

1 A. Yes. "Prohibition of Knowledge Transfer."

2 Q. (By Mr. Nemelka) "And DMS Access." I know you
3 want to leave off the last part. But it says "and DMS
4 access"; correct?

5 MS. GULLEY: Objection; form.

6 MR. RYAN: Object to form.

7 MS. GULLEY: And move to strike the
8 instruction.

9 Q. (By Mr. Nemelka) "With the exception of the
10 obligations set forth in Sections 4.5" -- and it even
11 identifies it as "[Prohibition on Knowledge Transfer and
12 DMS Access]...this Agreement shall terminate at the end
13 of the Wind Down Period."

14 MS. GULLEY: Objection.

15 Q. (By Mr. Nemelka) So --

16 A. I see what you're saying, but I've got to
17 reiterate again, okay? It's been a long war with ADP.
18 The long war is -- has finally settled, okay? I heave a
19 sigh of relief. My guys, their guys, our attorneys,
20 their attorneys, they build this document. It comes to
21 me for signature. And I said, "My God, I'm -- I'm
22 happy -- I'm happy to sign this damn thing and have it
23 off the list." You know, I did not read it, certainly
24 not at the level of detail that you're talking about.

25 You know, I would further support that the

1 stand-down worked. You know, they, in fact, you know,
2 got out of our systems. They quit -- they quit hacking
3 them, you know. They quit -- quit being bandits. They
4 got out.

5 And we accomplished the transition such
6 that none of -- none of our mutual customers -- the
7 dealerships that are our mutual customers, where we got
8 the DMS but, you know, they've got a third party that's
9 been doing something else -- nobody got mad. Nobody
10 got -- I didn't get any letters. I didn't get any angry
11 phone calls. So, you know, whatever this document is
12 and whatever shortcomings it might have, it worked.

13 MR. NEMELKA: We can take lunch.

14 MS. GULLEY: Let's go off the record.

15 THE VIDEOGRAPHER: The time is 12:38 p.m.
16 We're off the record.

17 (Short recess 12:38 to 1:42 p.m.)

18 THE VIDEOGRAPHER: The time is 1:42 p.m.
19 We're back from lunch and we're back on the record.

20 EXAMINATION (Continuing)

21 BY MR. NEMELKA:

22 Q. Good afternoon, Mr. Brockman.

23 A. I'm sorry we don't have a prettier day for
24 you-all.

25 Q. It's still beautiful views.

1 A. It has been really pretty.

2 Q. So after Reynolds and CDK concluded the -- the
3 wind-down agreement, Reynolds then did release those
4 security enhancements that it had been holding off on;
5 correct?

6 MS. GULLEY: Form.

7 A. I'm not personally aware, but that's my --
8 that's my belief.

9 Q. (By Mr. Nemelka) And after the agreement,
10 Reynolds protected the user IDs that CDK was using to
11 access the Reynolds system; is that right?

12 MS. GULLEY: Objection; form.

13 A. That was part of the stand-down agreement, and
14 it's my understanding that's now all over.

15 Q. (By Mr. Nemelka) So the security enhancements
16 did not affect CDK's access to the sys- -- to the
17 Reynolds system, right?

18 MS. GULLEY: Form.

19 A. That's correct. The whole goal of -- of the
20 stand-down agreement was to provide for an orderly
21 stand-down, and that -- and that meant enabling their
22 customers to operate without issue during the stand-down
23 period.

24 Q. (By Mr. Nemelka) But those security
25 enhancements did affect Authenticom, right?

1 MS. GULLEY: Objection; form.

2 A. I -- I'm not aware.

3 Q. (By Mr. Nemelka) They were intended to, right?

4 MS. GULLEY: Objection; form.

5 A. No. Again, our security enhancements are --
6 are not specifically aimed at any individual entity.
7 The problem is, we can't, because when we see things
8 happening, people coming into our system, we don't know
9 who they are and -- and we can't track who they are.
10 And therefore, unless they have put in their user ID,
11 something that identifies them, we don't know who they
12 are.

13 Q. (By Mr. Nemelka) After you entered into this
14 agreement with CDK, you started to approve some --
15 strike that.

16 After you entered into the agreement with
17 CDK, you believed that the logic had shifted somewhat
18 with respect to pricing that you offered dealers who
19 were coming on board, right?

20 MS. GULLEY: Objection; form.

21 A. I -- I disagree with that. I think that our --
22 our position, as far as negotiating the discounts and
23 whatever raised all the time. And it depends a lot on
24 the overall macroeconomic situation that we're facing
25 nationwide or, specifically, what the -- the certain

1 states, certain market areas go through periods of
2 tougher times, discounting various -- all over the
3 point.

4 Q. (By Mr. Nemelka) The logic had shifted
5 somewhat due to you getting the CDK RCI business, right?

6 MS. GULLEY: Form.

7 A. I don't believe that's the case at all. I
8 think that -- since I'm the one that's personally in
9 charge of -- of approving this percentage discounts,
10 they're part of the market conditions. The -- our
11 competitors go through cycles. If you can watch, for
12 instance, CDK -- CDK in the month or two before their
13 year-end -- their fiscal year-end, they'll be much more
14 aggressive in discounting.

15 Other competitors have other, you know,
16 closing of sales quota deadlines. And they get really
17 aggressive just before the deadline, because they're
18 trying to, you know, meet their quotas so they get their
19 bonuses. And that's the drivers behind percentage
20 discounts.

21 (Exhibit 648 marked for identification?)

22 Q. Mr. Schaefer, I've handed you Plaintiff's
23 Exhibit 648 --

24 MS. GULLEY: Brockman.

25 MR. NEMELKA: Sorry. Mr. Brockman. What

1 did I say? Schaefer?

2 Q. (By Mr. Nemelka) Mr. Brockman, I've handed you
3 Plaintiff's Exhibit 648. And the email I'm focusing on
4 is your email dated Thursday, May 7th, 2015 to Agan,
5 where you write, "The logic has shifted somewhat due to
6 us getting the CDK RCI business (and soon to get
7 Authenticomas [sic] well)." Do you see where you wrote
8 that?

9 MS. GULLEY: Form.

10 A. Yes, I do.

11 Q. (By Mr. Nemelka) And then you wrote, "A deal
12 with numbers of dealerships will have a number of
13 additional RCI 3rd parties where we get that revenue if
14 we have those dealership's DMS systems." Do you see
15 that?

16 MS. GULLEY: Form.

17 A. Yes, I do.

18 Q. (By Mr. Nemelka) So the logic had shifted a
19 little bit, because now you're going to be getting the
20 additional RCI revenue if the dealers are using your
21 DMS, right?

22 MS. GULLEY: Objection; form.

23 A. I don't think this has anything to do with the
24 percentage discounts on deals. This is obviously
25 talking about customers.

1 Q. (By Mr. Nemelka) Right. DMS customers;
2 correct?

3 A. Yes.

4 Q. If you turn to the next page, I believe that
5 Mr. Agan is asking you for your approval at the bottom.
6 "Are you okay with a 55.38% discount?"

7 MS. GULLEY: Form.

8 Q. (By Mr. Nemelka) Do you see where he says
9 that?

10 A. I see that --

11 MS. GULLEY: Objection; form.

12 A. -- but I'm -- I'm reading the rest of it to see
13 what, in context, that's all about. Could you repeat
14 your question, please?

15 Q. (By Mr. Nemelka) Sure. Mr. Agan asked you if
16 you would approve of 55.38 percent discount for this
17 dealer that you were trying to sign; correct?

18 MS. GULLEY: Form.

19 A. That's correct.

20 Q. (By Mr. Nemelka) You approved it, because the
21 logic had shifted somewhat, due to you getting the CDK
22 RCI business and Authenticom's as well, right?

23 MS. GULLEY: Objection; form.

24 A. I think I've already, you know, said that those
25 two sentences you said, that I see them.

1 Q. (By Mr. Nemelka) Okay. Your contract with
2 CDK -- you can set that aside Mr. Brockman -- your
3 contract with CDK required Reynolds to take over all of
4 CDK's existing third-party relationships, regardless of
5 size; isn't that right?

6 MS. GULLEY: Form.

7 A. Third-party relationships where they were, you
8 know, hacking our systems, that's when I was talking
9 about.

10 Q. (By Mr. Nemelka) "Third parties," meaning the
11 vendors to whom CDK was providing Reynolds dealer data,
12 right?

13 MS. GULLEY: Form.

14 A. Yes, that's correct.

15 Q. (By Mr. Nemelka) You also wanted to take every
16 Authenticom customer that came to you, regardless of
17 size; correct?

18 MS. GULLEY: Objection; form.

19 A. I -- I don't think that's correct.

20 (Exhibit 649 was marked for
21 identification.)

22 Q. (By Mr. Nemelka) I've handed you what I've
23 marked as Plaintiff's Exhibit 649, which is an email
24 chain between you and Tommy Barras and Bob Schaefer.
25 And the email I want to focus on, Mr. Brockman, is the

1 one that you sent on Friday, August 21st, 2015, at the
2 bottom, to Tommy Barras, where you write, "We also want
3 to take every Authenticom customer that comes to us,
4 regardless of size." It's at the bottom of that page.
5 Do you see that?

6 MS. GULLEY: Objection; form.

7 A. I think what's going on here is in -- as the --
8 our agreement with CDK requires us to take over all
9 their existing third-party relationships. That's an
10 integral part of this stand-down.

11 Generally speaking, you know, we're not
12 interested in just anything, as far as size is
13 concerned. You know, small dealers are not, you know,
14 what our target market is. You know, we're -- we live
15 more in the larger dealer -- or larger group
16 marketplace. And so therefore, you know, the comments
17 as far as Authenticom is concerned, you know, they all
18 relate to size more than anything else.

19 Q. (By Mr. Nemelka) You wrote here, "We also want
20 to take every Authenticom customer that comes to us,
21 regardless of size"; correct?

22 MS. GULLEY: Objection; form.

23 Q. (By Mr. Nemelka) Very bottom, last -- the last
24 thing on the page.

25 MS. GULLEY: Objection; form.

1 Q. (By Mr. Nemelka) You wrote that; correct?

2 MS. GULLEY: Form.

3 A. Yes, I did. But I think that that was at -- at
4 a point in time that that's not been our policy ongoing,
5 regardless of size -- to take people -- take customers
6 that are -- regardless of size. You can look at our --
7 our customer base, you know, we're predominantly larger
8 dealerships.

9 Q. (By Mr. Nemelka) Authenticom customers are
10 the -- are not dealerships. They're -- they're ven- --
11 they're vendors, right?

12 MS. GULLEY: Form.

13 Q. (By Mr. Nemelka) Well, they're both, but the
14 customers you're talking about here are the vendors that
15 need access to dealer data, right?

16 MS. GULLEY: Form.

17 A. Yeah, but I think the -- certainly, you know,
18 those types of customers vary greatly in size as well.

19 Q. (By Mr. Nemelka) And so if -- if a vendor is
20 small and doesn't serve that many dealers, you're not
21 interested in -- in serving them, then?

22 MS. GULLEY: Form.

23 A. It's a matter of priority. We have, you know,
24 great development resources, but all development
25 resources are not without limit. And therefore, from

1 time to time, we get really busy and we get really
2 behind. And therefore, our -- our appetite for, you
3 know, small situations, you know, varies.

4 Q. (By Mr. Nemelka) In fact, after this agreement
5 with CDK, you had a lot of -- a lot of work to bring on
6 all of the former CDK customers into the RCI program,
7 right?

8 MS. GULLEY: Objection; form.

9 A. That's correct.

10 Q. (By Mr. Nemelka) You wrote that you had a
11 mountain of work ahead of you, with over 100 RCI
12 customers to convert, right?

13 MS. GULLEY: Form.

14 A. I believe at one point in time, that I -- I
15 made that statement because that was the case.

16 Q. (By Mr. Nemelka) And by mid-2017, two years
17 later, Reynolds had successfully converted many of those
18 former CDK vendors into the RCI program, right?

19 MS. GULLEY: Form.

20 A. I'm not sure about that specific date. But I
21 do know we made steady progress and... (Pause.)

22 (Exhibit 650 was marked for
23 identification.)

24 Q. (By Mr. Nemelka) I've handed you Plaintiff's
25 Exhibit 650, which is an email from Tommy Barras to you,

1 dated Friday, July 7th, 2017. Who is Tommy Barras?

2 MS. GULLEY: Form.

3 A. Tommy Barras is head of our -- our software
4 group.

5 Q. (By Mr. Nemelka) And he wrote to you about CDK
6 vendors that moved into the RCI program, right?

7 A. That's correct.

8 Q. And he writes, "Bob, In 2015 you challenged
9 DEV" -- what is DEV, a development?

10 A. Development.

11 Q. Software development?

12 A. Yes.

13 Q. -- "and DSV" -- is that data services?

14 A. That's correct.

15 Q. -- "(Schaefer) with absorbing 157 CDK vendors
16 into the RCI program." Do you see that?

17 A. That's correct.

18 Q. Now, these are not vendors that CDK owned.
19 These are former CDK customers, right?

20 MS. GULLEY: Form.

21 A. That's correct. These -- these are companies
22 that had been employing CDK to enter our system as, you
23 know, hackers.

24 Q. (By Mr. Nemelka) And as part of the wind-down,
25 CDK worked with you to transition those customers to

1 Reynolds so that they could join the RCI program;
2 correct?

3 MS. GULLEY: Objection; form.

4 A. That's correct.

5 Q. (By Mr. Nemelka) And it was CDK's access to
6 the Reynolds system on behalf of those customers that
7 you protected during that five-year wind-down period,
8 correct?

9 MS. GULLEY: Objection; form.

10 A. That's correct.

11 Q. (By Mr. Nemelka) You asked Mr. Schaefer to
12 calculate the amount of revenue that Reynolds was
13 supposed to realize out of this agreement with CDK,
14 right?

15 MS. GULLEY: Objection; form.

16 A. I don't know that I asked that specifically of
17 Bob Schaefer.

18 Q. (By Mr. Nemelka) You asked -- you asked
19 somebody on -- on your team to calculate the amount of
20 revenue that Reynolds was supposed to realize out of the
21 CDK deal, right?

22 MS. GULLEY: Objection; form.

23 A. I don't recall who that was, but it may well
24 have -- it may well have occurred.

25 Q. (By Mr. Nemelka) Regardless of who it was, you

1 made that request. You wanted to know how much
2 Reynolds -- how much -- the amount of revenue that
3 Reynolds was supposed to realize out of the deal, right?

4 MS. GULLEY: Objection; form.

5 A. That's correct. We -- we had -- as I think
6 we've -- before lunch, I talked about the fact that we
7 had -- CDK had cost us a lot of -- a lot. And, you
8 know, we were hoping to make back these, you know,
9 third-party vendors coming directly to us through the
10 RCI program as opposed to going through CDK. That was
11 our way to ultimately dig out of the hole, you know,
12 from a -- a money standpoint that we had been put
13 through by CDK.

14 Q. (By Mr. Nemelka) You testified earlier they
15 cost you millions in this form of -- market -- market
16 messaging about data security and losing dealer
17 customers, right?

18 A. It's cust- --

19 MS. GULLEY: Objection; form.

20 You just have to let him finish his
21 question and then you can answer.

22 A. That consists of the revenue we lost by
23 customers that we should have been able to sell but
24 couldn't sell, or customers -- which was the -- the more
25 minor group, customers that actually left us because

1 of -- because of security.

2 Q. (By Mr. Nemelka) And those customers you're
3 referring to are the dealers, not --

4 A. That's right.

5 MS. GULLEY: Objection; form.

6 Just -- just -- for the court reporter and
7 for the record, he'll ask his question and then you
8 answer.

9 MR. NEMELKA: We're doing okay, but --

10 Q. (By Mr. Nemelka) And -- excuse me -- your team
11 did calculate the val- -- the amount of revenue that
12 Reynolds was supposed to realize out of the CDK deal,
13 right?

14 MS. GULLEY: Form.

15 A. I see that you're referring to documents that
16 I'm not -- I'm not having the opportunity to look at.

17 Q. (By Mr. Nemelka) Well, I'm just wondering --
18 you remember if you made this request, and your team did
19 actually make that calculation; correct?

20 MS. GULLEY: Objection; form.

21 A. Yes, I believe they did. It looks like -- if
22 that's what you're looking at. It's not being shared
23 with me, which -- which I find, you know, a little
24 unusual.

25 Q. (By Mr. Nemelka) All right. I'm just trying

1 to get -- get through this efficiently. I'm not trying
2 to do anything else.

3 MS. GULLEY: Objection to the statement.

4 Q. (By Mr. Nemelka) Okay. Well, then, let's do
5 --

6 MR. NEMELKA: 69.

7 (Exhibit 651 was marked for
8 identification.)

9 Q. (By Mr. Nemelka) I truly am only going to show
10 you that one part about the -- this is a big, long
11 document -- I'm only going to show you -- or ask you
12 about the part that we just talked about, which is the
13 team calculating the value of the CDK deal with you. If
14 you intend on reading this whole thing, then I'll just
15 skip. So I'm --

16 THE WITNESS: What's that about?

17 MS. GULLEY: I object to everything you
18 just said: Statements, instructions, et cetera. But
19 first of all, can you at least hand it to him?

20 Q. (By Mr. Nemelka) I'd like to mark Exhibit --
21 Plaintiff's Exhibit 651, which is an email from Craig
22 Moss to you, Mr. Brockman, dated Friday, August 25th,
23 2017, the subject being "July 2017 Financials." Do you
24 see that that's the subject, at least, of this?

25 MS. GULLEY: Form.

1 Q. (By Mr. Nemelka) Mr. Brockman?

2 MS. GULLEY: Form.

3 A. If I can just kind of leaf through what -- what
4 this... (Pause.)

5 This appears to be part of our confidential
6 internal financial information. And so, therefore, it's
7 okay that I don't have to read every page of it.

8 Q. (By Mr. Nemelka) Thank you. So you received
9 monthly financials like this from Mr. Moss?

10 MS. GULLEY: Form.

11 A. They're not financial statements. They're
12 management reports concerning the finances. That's the
13 technically accurate description.

14 Q. (By Mr. Nemelka) And this is one from July
15 2017, that you received?

16 MS. GULLEY: Form.

17 A. Yes.

18 Q. (By Mr. Nemelka) And if you could turn with me
19 to Page 17. There you are. On the bottom-highlighted
20 part, which is how it was produced to us -- you see the
21 bottom-highlighted part that says, "We are expecting an
22 annual revenue of approximately \$30 million (original
23 \$21M, plus additional dealers, added interfaces and
24 price increases, etc) generated from the CDK Deal."

25 A. Yeah, that means that --

1 MS. GULLEY: Objection; form.

2 A. -- in 10 to 12 years, we might break out.

3 Q. (By Mr. Nemelka) What do you mean by that?

4 MS. GULLEY: Form.

5 A. Well, as -- as I've stated before, CDK's
6 position, as far as hacking our customers, has cost us
7 millions. And, you know, based upon this amount of
8 money, we got a ways to go.

9 Q. (By Mr. Nemelka) The annual revenue, though,
10 is 30 million, that they calculated, correct?

11 MS. GULLEY: Objection; form.

12 A. That's what it says.

13 Q. (By Mr. Nemelka) And that includes added
14 interfaces, which means additional RCI customers, right?

15 MS. GULLEY: Form.

16 A. No. I don't think that -- "additional
17 interfaces" means additional datasets that third parties
18 would want out of Reynolds systems.

19 Q. (By Mr. Nemelka) That they were getting from
20 CDK before?

21 MS. GULLEY: Form.

22 A. No. It's kind of like pitter-patter, like the
23 rain. Either OEMs or various third parties want more
24 data or different types of data, and it's not related to
25 the -- the stand-down agreement at all. It's just part

1 of their, you know, their desire for more data.

2 Q. (By Mr. Nemelka) And now that they're
3 customers of Reynolds, you get the financial benefit of
4 that; correct?

5 MS. GULLEY: Form.

6 A. That's correct.

7 Q. (By Mr. Nemelka) I skipped one. "Plus
8 additional dealers," meaning -- what -- what does that
9 mean?

10 MS. GULLEY: Objection; form.

11 A. Well, what I believe that means is -- and
12 that's that there's constant movement as far as
13 ownership of dealerships. And if we have a group that
14 has dealerships in it and they're all on Reynolds, if
15 that dealer buys another dealer, so they -- he now has
16 11, what's going to happen is -- and that's if that
17 dealer is not already on Reynolds -- he's going to
18 convert to Reynolds, likely, and vice versa.

19 If there's a group of -- of ten
20 dealerships, all of which are on CDK, and they buy
21 another dealership that's on Reynolds, you know, the
22 odds are very, very, very high that that dealership will
23 be converted to CDK. And all that has some impact on
24 what's going on in the world.

25 Q. (By Mr. Nemelka) And then you list price,

1 here -- what is listed here is price increases. So
2 price increases for -- for DMS and RCI?

3 MS. GULLEY: Objection; form.

4 A. It's just -- it's part of our standard
5 pricing-based process.

6 Q. (By Mr. Nemelka) But the price increases here
7 would have referred to price increases for DMS, right?

8 MS. GULLEY: Objection; form.

9 A. Our price increase policy covers all -- all
10 products, you know, all services.

11 Q. (By Mr. Nemelka) What is your price increase
12 policy?

13 MS. GULLEY: Objection; form.

14 A. It is -- you know, typically CPI plus 2, which
15 represents the normal rate of CPI plus those things that
16 cost us extra, because we're in the high tech business.
17 Principally, salaries.

18 Q. (By Mr. Nemelka) So you -- so for your DMS
19 business, your standard price increases every year is
20 CPI plus 2 percent?

21 A. That's correct.

22 MS. GULLEY: Form.

23 Q. (By Mr. Nemelka) And for -- okay.

24 And this 30 million is an annual number,
25 it's not -- you said over 10 to 12 years. That -- that

1 30 million is not over 10 to 12 years. That 30 million
2 is an annual number, right?

3 A. That's not what I meant at all. When I say
4 that CDK has cost us in the millions, I'm not talking
5 about the 30 or 40 or 50 million, I'm talking in the
6 hundreds of millions, over time. And, you know, so it
7 takes a while before \$30 million worth of revenue out of
8 this particular situation even begins to make up for
9 what they've done.

10 Q. You said 10 to 12 years, so 30 times 10, about
11 300 to \$360 million?

12 A. Absolutely.

13 MS. GULLEY: Objection; form.

14 A. Absolutely.

15 Q. (By Mr. Nemelka) Is what CDK cost you as a
16 result of them -- their data access on the Reynolds
17 system?

18 A. Yeah, and the fact that they badmouthed, you
19 know, our process, I think, unjustifiably. And they --
20 and they did that, you know, high and wide, you know, in
21 the -- in the market.

22 Q. Badmouthing your data access policies in the
23 market; is that right?

24 MS. GULLEY: Objection; form.

25 A. That's correct.

1 Q. (By Mr. Nemelka) CDK doesn't badmouth your
2 data access policies anymore, does it?

3 MS. GULLEY: Objection; form.

4 A. It's not been as prevalent as it was before.

5 Q. (By Mr. Nemelka) That badmouthing large- --
6 largely stopped after you entered into this agreement
7 with them, right?

8 MS. GULLEY: Objection; form.

9 A. Again, I have no way of measuring that.

10 Q. (By Mr. Nemelka) It wasn't just CDK and
11 Authenticom that you wanted to get -- get rid of. You
12 wanted to get rid of all independent data integrators
13 that dealers were using for automated access to the
14 Reynolds -- Reynolds system; correct?

15 MR. RYAN: Object to form.

16 A. I -- I definitely want to eliminate, you know,
17 completely, you know, all automated access to Reynolds
18 systems. It's -- it is a classic security breach.

19 Q. (By Mr. Nemelka) Could Reynolds -- could CDK
20 access your system today with their independent
21 integrators?

22 MS. GULLEY: Objection; form.

23 MR. RYAN: Objection; form.

24 A. When you say "independent integrators," I don't
25 recognize that term.

1 Q. (By Mr. Nemelka) Meaning DMI and Integra
2 Link!.

3 MS. GULLEY: Objection; form.

4 A. The people -- the guys that are in the hacking
5 business, the bandits?

6 Q. (By Mr. Nemelka) Yeah.

7 A. Yeah, I don't know. As I've said before, you
8 know, security is a cat-and-mouse game, and it could
9 well be that they, you know, figured out some new way,
10 and it's -- where I -- it's not discernible to us who it
11 actually is. It could be in there today and --
12 because that's the nature of it, of -- of the situation.

13 You know, somebody on the outside figures
14 out a new way to come in. We don't know who it is. You
15 know, we figure out how to block it. You know, the only
16 way we know for sure, you know, was when somebody
17 squawks.

18 Q. One of the independent integrators was
19 StoneEagle; correct?

20 MS. GULLEY: Objection; form.

21 A. Yes.

22 Q. (By Mr. Nemelka) I've handed you Plaintiff's
23 Exhibit 652.

24 (Exhibit 652 was marked for
25 identification.)

1 Q. (By Mr. Nemelka) This is an email from you to
2 Mr. Schaefer, dated April 14, 2016. And your question
3 is: "Bob, When do we get rid of StoneEagle?" And
4 that's referring to not allowing them to access dealer
5 data on the Reynolds DMS anymore, right?

6 MS. GULLEY: Objection; form.

7 A. That -- that's correct. We are -- we are now,
8 finally -- you know, StoneEagle has joined the RCI
9 program, and they had to make a -- a number of changes
10 in their software, and all that's been accomplished.
11 And they're now a -- in a peaceful situation as far as
12 we're concerned. They're -- they're in the RCI program.
13 They're getting their data. They're getting their
14 business done.

15 Q. (By Mr. Nemelka) For a while, Reynolds had
16 been protecting their access to the -- to -- to the
17 system; correct?

18 MS. GULLEY: Objection; form.

19 A. It -- it is -- it is typical in the situation
20 where we have a -- a -- a party, which is doing like
21 StoneEagle was, which is, basically, hacking in. And
22 they say, "Oh, well, we're sorry. We'll do better.
23 We'll sign up for RCI." And they do, but they don't get
24 it done. They -- they don't -- they don't make the
25 changes in on their side that's necessary for them to

1 access through the RCI program, and so they linger in
2 this, you know, this -- this in-between mode. And, you
3 know, of all the -- the one's where that issue came up,
4 StoneEagle was the worst. And it is with a sigh of
5 relief that that's fixed, done, over with.

6 (Exhibit 653 was marked for
7 identification.)

8 Q. (By Mr. Nemelka) I've handed you Plaintiff's
9 Exhibit 653, which is an email from you to Mr. Schaefer,
10 dated Wednesday, April 19, 2017, where you write to
11 Mr. Schaefer, "Bob, Give them written notice that we
12 will shut down their current method of access for
13 security reasons on June 1, 2017." And that referred to
14 StoneEagle; correct?

15 A. That first email doesn't say that it's
16 StoneEagle, but I believe in context with the second
17 email, it does indicate that it is StoneEagle.

18 Q. And up to the time, and for -- for several
19 years, their method of access had been protected while
20 they were applying for the RCI program, right?

21 MS. GULLEY: Objection; form.

22 A. That's correct.

23 Q. (By Mr. Nemelka) And their method of access
24 was -- I'm sorry, Mr. Brockman.

25 A. I don't understand their method of access. It

1 was their method. They -- they were doing it all on
2 their own. You know, this indicates, you know, what
3 I've been saying all along. We were very, very
4 frustrated by these people. And I think this one line
5 here, which says, "I think its 2 years now we've been
6 strung out....." -- we were not happy.

7 Q. Mr. Brockman, in 2015, you asked Mr. Schaefer
8 about -- questions about the state of affairs before
9 Authenticom got cut -- got shut off. You wanted to know
10 how many DMS providers' data does Authenticom provide
11 Reynolds. Two, and how many dealerships for each DMS
12 providers was Authenticom serving Reynolds apps with?
13 Do you recall asking Mr. Schaefer to compile that
14 information?

15 MS. GULLEY: Objection; form.

16 A. Not specifically, but I would -- not be unusual
17 for me to ask that.

18 (Exhibit 654 was marked for
19 identification.)

20 Q. (By Mr. Nemelka) Mr. Brockman, I've handed you
21 Plaintiff's Exhibit 654, which is an email from
22 Mr. Schaefer to you, dated Friday, November 20th, 2015.
23 I will give you a chance to look at it, but your email
24 to him starts the chain on the back page.

25 A. I'm looking on the back page. If you recall,

1 earlier today, I mentioned the term "ReminderTrax."

2 Q. Mm-hmm.

3 A. It's a -- it's a service reminder program for
4 dealerships, to remind their -- their customers to come
5 back in and have oil changed or other routine
6 preventative maintenance. And I said that, you know,
7 that was a very minor thing that was going on, and it
8 talks -- right here, it says, "16 CDK dealers," which,
9 in the scope of things, is -- is a very, very small
10 situation.

11 Q. Mr. Sch- -- Brockman, if you look at the first
12 page, though, it's identified "ReminderTrax." There's
13 199 CDK connections that Authenticom provides. Do you
14 see that?

15 MS. GULLEY: Objection; form.

16 A. Can you point that one out to me?

17 Q. (By Mr. Nemelka) Sure.

18 A. I'm not --

19 Q. Right there (indicating).

20 A. Okay.

21 MS. GULLEY: Objection; form.

22 A. Okay, I stand corrected.

23 Q. (By Mr. Nemelka) And what's listed here
24 are the various Reynolds applications -- are the -- are
25 the columns, MMS, AIMDATA, ReminderTrax, IMN and so

1 forth, right?

2 MS. GULLEY: Form.

3 Q. (By Mr. Nemelka) Those are the columns?

4 MS. GULLEY: Form.

5 Q. (By Mr. Nemelka) Is that right?

6 MS. GULLEY: Form.

7 A. Okay. Would you repeat that again?

8 Q. (By Mr. Nemelka) Sure. These datas
9 along these -- companies along the top, MMS, AIMDATA,
10 ReminderTrax, IMN, Xstream, OnlineD and KeyTrack, those
11 are Reynolds applications; correct?

12 A. Correct.

13 Q. And on the left are the DMSs that dealers use;
14 correct?

15 A. Yes. Okay. I -- I understand that now.

16 Q. And what this is showing is the connections
17 that Authenticom provides to the dealers using these
18 DMSs; correct?

19 MS. GULLEY: Objection; form.

20 Q. (By Mr. Nemelka) For -- for these various
21 applications?

22 MS. GULLEY: Objection; form.

23 Q. (By Mr. Nemelka) Is that correct?

24 MS. GULLEY: Form.

25 A. For instance, if he looks at the CDK line,

1 that's where the 199 number is. And I -- I'm afraid I'm
2 not getting what you're trying to get at as far as
3 this -- this chart is concerned.

4 Q. (By Mr. Nemelka) All right. Well, just --
5 what Mr. Schaefer is reflecting here are the number
6 of -- he's answering your question, which is: "What DMS
7 provider's data does Authenticom provide to us? How
8 many dealerships are there from each DMS provider?"
9 Those are the questions that you asked on the email that
10 we looked at, right?

11 MS. GULLEY: Form.

12 A. You -- you keep referring to the CDK line.
13 What's that got to do with Authenticom?

14 Q. (By Mr. Nemelka) These are the CDK -- numbers
15 of -- that the dealers that use CDK for whom Authenticom
16 is providing access to that data for these Reynolds
17 applications.

18 MS. GULLEY: Objection; form. Is that a
19 question?

20 Form.

21 Q. (By Mr. Nemelka) If you look back at your
22 que- -- at your email, you say, "Bob, Questions on the
23 state of affairs before Authenticom got shutoff....."
24 Do you see that? Your email to Mr. Schaefer?

25 A. Yes.

1 Q. And you say, "What DMS provider's data does
2 Authenticom provide to us?" Do you see that?

3 A. Yeah, but, you know, you keep referring to the
4 CDK line, and that's not the Authenticom line.

5 Q. Right. But -- but your question was: How many
6 dealerships are there from each DMS provider that
7 Authenticom provides you with access?

8 A. Okay. But --

9 MS. GULLEY: Objection; form.

10 A. Okay. But the point that I'm -- I'm not -- I'm
11 not getting is -- is what does Authenticom have to do
12 with the CDK line on -- on this -- on this chart? These
13 are -- it appears to me, that these are dealership's
14 data that CDK is providing to ReminderTrax. For
15 instance, that 199 number. ReminderTrax is -- is the
16 Reynolds application, and the 199 is -- is the
17 dealerships that -- where CDK has been -- has been
18 serving up -- up to that application. Authenticom is --
19 is not related to that line.

20 Q. (By Mr. Nemelka) Well, we can ask Mr. Schaefer
21 what he did here. My understanding was that he is
22 providing with you the number -- he's answering your
23 questions, which is: "The state of affairs before
24 Authenticom got cut off," "What DMS provider's data does
25 Authenticom provide to us?" and "How many dealerships

1 are there from each DMS provider" for that?

2 MS. GULLEY: Objection to that.

3 A. Okay.

4 MS. GULLEY: There's no question.

5 A. I -- I understand the question. I just don't
6 see where that answer is -- the CDK line on the first
7 page.

8 Q. (By Mr. Nemelka) Okay. We'll ask Mr. Schaefer
9 about that. You can put that aside.

10 Mr. Schaefer, are you aware --

11 MS. GULLEY: Mr. Brockman.

12 MR. NEMELKA: I'm sorry. Strike that.

13 Q. (By Mr. Nemelka) Mr. Brockman, are you aware
14 that -- that Reynolds has an ERA DMS expiration
15 opportunity close date list with respect to dealer
16 customers?

17 MS. GULLEY: Objection; form.

18 A. An ERA EXT?

19 Q. An ERA DMS expirations and opportunity close
20 dates.

21 MS. GULLEY: Objection; form.

22 A. I'm -- I'm not familiar with any kind of
23 list with that kind of nomenclature. We've got lots of
24 lists, but...

25 Q. (By Mr. Nemelka) All right. A list of those

1 dealers that have DMS contracts coming up for renewal
2 within the next six months?

3 A. Okay. You're talking about, you know, contract
4 expiration.

5 Q. Yes.

6 A. Okay. Okay, I understand that term.

7 Q. And Reynolds keeps a list of those dealers that
8 are coming up for renewal in six months, right?

9 A. That's right.

10 Q. And Reynolds has protected those dealers who
11 use independent integrators like Authenticom from any
12 type of interference with that during that six-month
13 window; correct?

14 MS. GULLEY: Form.

15 A. I -- I think we have done some of that. I
16 don't know that policy is still in place, but I know as
17 part of the -- the process of unwinding hacker-type kind
18 of relationships, that what we've done is, is we've --
19 we've taken measures to keep the things quiet from a
20 customer's standpoint while we're in -- you know,
21 contract renewal negotiation process.

22 Q. (By Mr. Nemelka) And then once you close on
23 that contract, then you stop that dealer from using the
24 independent integrators, right?

25 MS. GULLEY: Objection; form.

1 A. I think at that point in time, we -- we
2 recommend more -- more strongly that they -- that they
3 look at their -- their data security policies.

4 Q. (By Mr. Nemelka) After closing of the
5 contract?

6 MS. GULLEY: Objection; form.

7 A. It's an opportune time for that discussion to
8 occur.

9 Q. (By Mr. Nemelka) And if they want to continue
10 to use independent integrators after the closing of the
11 contract, did you -- did you let them?

12 MS. GULLEY: Objection; form.

13 A. Not over a long period.

14 Q. (By Mr. Nemelka) Mr. Brockman, what is
15 syscheck? Syscheck, s-y-s-c-h-e-c-k?

16 MS. GULLEY: Form.

17 A. I understand about this one. The -- the
18 operating system that we use on the computers that
19 operate the Arrow system -- it's Linux -- and Linux has
20 an interesting attribute in that -- let's say you have a
21 30-user system. Linux will allow you to start running
22 30 -- what we call "batch jobs." This will be, like,
23 end-of-month, general ledger, schedules, parts ordering,
24 that sort of thing.

25 What's happens is -- and that's that the

1 customer is -- is allowed to, unknowingly, kind of step
2 off into a hole where response time is going to be
3 terrible throughout the whole system because they let
4 too many things get going.

5 And what -- what this is -- is this
6 typically is a battle between the accounting department
7 and the parts and service departments. Because the
8 accounting department's end-of-month, they have all
9 manner of big, long, huge reports they want to run, and
10 they can basically gobble the capacity of the -- of the
11 server completely so that the people in the parts
12 department, when they're doing -- they're selling parts,
13 printing invoices, whatnot, service advisors are writing
14 repair orders and printing service invoices -- their
15 response time is terrible.

16 So there is a -- a place inside the Linux
17 operating system where you can go and interrogate and
18 see how busy the whole system is. And syscheck, what it
19 does is in essence that it goes and checks that area,
20 you know, meter -- think of it as a meter -- checks that
21 meter to see how busy things are. Things are too busy,
22 it will not let somebody -- a user start a batch job,
23 because if they do, they're going to destroy, you know,
24 response times for the parts department and the service
25 department. That's what syscheck is all about. It

1 works really good.

2 Q. (By Mr. Nemelka) And you wrote that syscheck
3 would be a way that we randomly cause Authenticom some
4 grief. How would you cause Authenticom grief through
5 syscheck?

6 MS. GULLEY: Objection; form.

7 A. Because the -- they run batch jobs in order to,
8 you know, get their -- get their business done, and
9 syscheck does not know that it's -- it's -- it's
10 Authenticom doing things. All they know is that
11 somebody is asking for a batch job and the system is
12 already too busy.

13 (Exhibit 655 was marked for
14 identification.)

15 Q. (By Mr. Nemelka) I've handed you Plaintiff's
16 Exhibit 655, which is an email from you to Tommy Barras,
17 dated August 15, 2017. And the subject of the email is
18 "Great day," and he's giving you an update on exemption
19 numbers; correct?

20 A. That's correct.

21 Q. And these exemptions are user IDs that Reynolds
22 had exempted for various data access points; correct?

23 MS. GULLEY: Form.

24 A. That's correct.

25 Q. (By Mr. Nemelka) And what he says is, "Today

1 is a good day from the security standpoint. Number of
2 exemption dropped from 932 to 526 in one week." So
3 as -- in August 14, 2017, you still had 932 exempt user
4 IDs, but that dropped to 527 in one week? Is that what
5 he's saying here?

6 MS. GULLEY: Form.

7 A. That's correct.

8 Q. (By Mr. Nemelka) And then, at the end he
9 writes, "Been a long road but we went from 12,000[+]
10 exemptions at the beginning to just over 500 ten years
11 later." Do you see that?

12 MS. GULLEY: Form.

13 A. Yes, I do.

14 Q. (By Mr. Nemelka) And then you respond, "I
15 agree - it has been a long pull - good to get there."
16 Right?

17 MS. GULLEY: Form.

18 A. Umm... (Pause.)

19 Q. (By Mr. Nemelka) Your email at the very top?

20 A. Okay. Yes. That -- that's what it says. It
21 has been a very long haul.

22 Q. All right.

23 A. A long haul. And frankly, by now -- it's now
24 down -- I think it's 300 or less.

25 Q. Today?

1 A. Today, uh-huh. I will not be completely happy
2 until it's zero.

3 Q. And these exemptions are the protected user
4 IDs, right?

5 MS. GULLEY: Objection; form.

6 A. That's correct.

7 Q. (By Mr. Nemelka) Mr. Brockman, you believed
8 that for vendors to truly make their apps work, they're
9 going to require RCI interface forever from Reynolds,
10 and the equivalent from CDK as well, right?

11 MS. GULLEY: Form.

12 A. I -- I think that would depend entirely on the
13 type of interface. And by that, there is -- there are
14 certain interfaces that are what we call "batch jobs."
15 And -- you know, these are situations where our
16 reporting software will, you know, with ease, you know,
17 create the data extracts that the dealer's looking for
18 for these types of -- of batch jobs, where they can --
19 they can run that batch job, you know, themselves and
20 send it off themselves to whoever -- you know, we --
21 there's no restriction on that.

22 But if they want it to be done conveniently
23 and happen every day with hands off, or whatever, that's
24 where RCI interface takes place.

25 Now, there's -- there's a second type of

1 interface which is where the third party is -- is asking
2 something to be done within our software. And the
3 classic example of that is Xtime. You know, Xtime, in
4 order for their software to work, they have to be able
5 to create reservation records. And they have to be able
6 to look at, you know, service history.

7 Those types of applications, since they're
8 actually part of our software, in order -- you know, for
9 their application to -- to work, you know, their RCI to
10 work, they got to keep doing it forever. As long as
11 Xtime does what Xtime does, you know, they have to do it
12 within our system.

13 Q. (By Mr. Nemelka) And what if they were to get
14 cut off by Reynolds? What -- what -- how would they --
15 how would they operate?

16 MS. GULLEY: Objection; form.

17 A. Well, since their -- their -- their stuff
18 actually runs inside our software, you know, they would
19 basically be unable to use our software to accomplish,
20 you know, what they do today.

21 Q. (By Mr. Nemelka) You believe that the Reynolds
22 DMS product is -- is a sticky product, right?

23 MS. GULLEY: Objection; form.

24 A. I don't think I've ever used that term in
25 relationship to the DMS. I've used that -- that term in

1 relationship to specific products. By "stickiness,"
2 what I mean is -- is they're so advantageous to the
3 dealership from a financial standpoint that they would
4 be -- they would have to think hard about changing to
5 another DMS provider.

6 Q. (By Mr. Nemelka) And what you're referring to
7 is the collection of the DMS, along with docuPAD and the
8 other applications, as you were describing, that form
9 the -- the retail management system; correct?

10 MS. GULLEY: Objection; form.

11 A. That's -- that's close. Okay? That's not
12 exactly correct, but it's pretty close.

13 Q. (By Mr. Nemelka) Okay. So finish it for me.
14 What did I miss?

15 MS. GULLEY: Form.

16 A. Well, we talk about stickiness in regards to
17 specific products, like docuPAD, for instance. You
18 know, we don't refer to the RMS itself as being -- which
19 is the collection of everything -- as being sticky. We
20 talk about specific products.

21 MS. GULLEY: Were you done with your
22 answer?

23 THE WITNESS: Yeah.

24 MS. GULLEY: Okay.

25 MR. NEMELKA: I wasn't starting to ask a

1 question.

2 Q. (By Mr. Nemelka) And you believe that the
3 value in your sticky products is so huge as to overcome
4 any economic advantage offered by CDK and Cox in their
5 offerings; correct?

6 MS. GULLEY: Objection to the form.

7 A. I believe that statement to be correct.

8 Q. (By Mr. Nemelka) Let's go off the record.

9 THE VIDEOGRAPHER: This is the end of Media
10 2. The time is 2:34 -- I'm sorry, 2:35 p.m. We're off
11 the record.

12 (Short recess 2:35 to 2:50 p.m.)

13 THE VIDEOGRAPHER: This is the beginning of
14 Media 3. The time is 2:50 p.m. We're back on the
15 record.

16 (Exhibit 656 was marked for
17 identification.)

18 Q. (By Mr. Nemelka) Mr. Brockman, I just wanted
19 to show you the document where you made that statement
20 about stickiness. It's Plaintiff's Exhibit 656.

21 MS. GULLEY: I object to the statement.

22 Q. (By Mr. Nemelka) This is an email that you
23 sent to Keith Hill, Tuesday, November 28, 2017. Do you
24 see that?

25 MS. GULLEY: Objection; form.

1 A. Yeah, November 28th, 2017?

2 Q. (By Mr. Nemelka) Yes.

3 A. Yes.

4 Q. And the second sentence says you -- or third
5 sentence -- whatever -- second line of your email is,
6 "The value in our sticky products is so huge as to
7 overcome any economic advantage offered by CDK and Cox."
8 Do you see that?

9 MS. GULLEY: Objection; form.

10 A. And what I'm talking about is -- and that's you
11 take, for instance, docuPAD. Average increase in gross
12 profit per sale -- per new unit sold, docuPAD, is right
13 at \$200. If you take a -- a typical finance manager
14 will do 70-plus transactions a month. That's \$14,000 a
15 month worth of additional gross. Now, if you got -- if
16 you got five finance managers, that's 14,000 times 5.
17 The numbers are crazy.

18 And that's -- the -- the stickiness issue
19 is -- we're not, you know -- no, we're not putting
20 sticky stuff on people. It's -- it's the additional
21 gross profit to the dealership is -- is compelling.

22 And -- and, you know, you perhaps have
23 seen, you know, in Automotive News, where we run ads.
24 These are direct quotes from people that you can call on
25 the phone where they say, you know, "Reynolds product,

1 docuPAD, pays my entire bill."

2 Q. (By Mr. Nemelka) And they have to have the
3 Reynolds DMS in order to use docuPAD; correct?

4 A. That's correct.

5 Q. So that helps with the stickiness of the
6 Reynolds DMS; correct?

7 MS. GULLEY: Objection; form.

8 A. That's correct.

9 Q. (By Mr. Nemelka) Okay. You can set that
10 aside.

11 Mr. Brockman, my last few questions are
12 just about your -- your email accounts. You -- you've
13 seen that we have an email account for -- for your
14 Reynolds business, right?

15 A. I only have one email account, period.

16 Q. You don't have -- do you have any other -- do
17 you have, like, a Gmail account?

18 A. No.

19 Q. The only email account you use is the -- is the
20 single Reynolds?

21 A. That has all of my personal data in it.

22 Q. And -- so all of your personal emails go
23 through your -- your Reynolds email account as well?

24 A. Yeah, I'm -- I've been planning now for several
25 months to change that, but it is -- you know, the

1 notification of senders is a big issue. And I haven't
2 been able to find the time to bite down and get that
3 done.

4 Q. And so do you have a doc- -- do your emails get
5 preserved -- that -- for your Reynolds email account?

6 MS. GULLEY: Objection; form.

7 A. They are all being preserved, at this point.

8 Q. (By Mr. Nemelka) And were they preserved back
9 in 2016, 2015?

10 MS. GULLEY: Objection; form.

11 A. My retention was somewhere between six -- six
12 months and a year. Now, based upon how full my
13 Outlook.pst file was getting -- and I get mountains of
14 email. I mean, I spend half my life looking at email.
15 And I don't smile at this, because I'm not intending it
16 to be a joke, it's real.

17 In our organization, there's a lot of
18 hunting, and a lot fishing goes on. And, you know, in
19 my organization, almost all my friends are inside the
20 organization, and we're hunting and fishing buddies, and
21 we swap fish pictures and hunting pictures. And they're
22 10 meg, and they're high res, and a good fish picture
23 deserves a really high res picture, and all that takes
24 up space. And so therefore, I -- I find that I have to
25 go back and delete --

1 Q. (By Mr. Nemelka) Do you have a laptop that you
2 use for business-related matters?

3 MS. GULLEY: Form.

4 A. I just have one computer.

5 Q. (By Mr. Nemelka) And is that a -- is that a
6 laptop?

7 A. Yes.

8 Q. And do you download your email on to the
9 laptop?

10 A. Correct.

11 Q. And did you do that back in 2016, 2015?

12 A. I've always done it that way.

13 Q. And do you have your emails backed up -- your
14 historical emails backed up, then, on that laptop?

15 A. No. I don't. When -- when the things get
16 purged, I'm -- I'm a -- still the old school. I -- I
17 confess, it's perhaps my age; I like paper. And so
18 anything that's -- that's worth keeping long term is
19 printed and put in a file.

20 Q. So you print out your emails and documents that
21 are worth preserving and they're put in files?

22 A. Yes.

23 Q. Okay. Has Reynolds ever issued any external
24 backup drive to either back up your -- your laptop?

25 A. No. They did not.

1 Q. Apart from printing them out, do you print them
2 out yourself or do you have your assistant print them
3 out?

4 A. I do it myself.

5 Q. Are those files kept at your home or in your
6 office at Reynolds?

7 A. At home.

8 Q. Do you use any other method, besides that
9 printout, to back up your emails or documents?

10 A. No.

11 Q. Do you use any tablets or mobile phones?

12 A. I have a mobile phone.

13 Q. Mobile phone. Any tablets?

14 A. No.

15 Q. And did your attorneys provide you with a
16 litigation hold notice?

17 MS. GULLEY: Objection; form.

18 A. Yes, they did.

19 MR. NEMELKA: All right. I have no further
20 questions today.

21 MS. GULLEY: Okay. Let's go off.

22 THE VIDEOGRAPHER: This concludes today's
23 proceeding for Mr. Robert Brockman. The time is 2:56
24 p.m., and we're off the record.

25 (Deposition adjourned at 2:56 p.m.)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4) IN RE: DEALER MANAGEMENT) MDL NO. 2817
5) SYSTEMS ANTITRUST)
6) LITIGATION,) CASE NO. 18 C 864
7))

8 REPORTER'S CERTIFICATION
9 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN
10 January 16, 2019
11 Volume 1

12
13 I, SHAUNA L. BEACH, Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify to the following:

16 That the witness, ROBERT BROCKMAN, was duly
17 sworn by the officer and that the transcript of the oral
18 deposition is a true record of the testimony given by
19 the witness;

20 I further certify that pursuant to FRCP Rule
21 30(e)(1) that the signature of the deponent:

22 X was requested by the deponent or a party
23 before the completion of the deposition and is to be
24 returned within 30 days from the date of receipt of the
25 transcript. If returned, the attached Changes and

1 Signature Page contains any changes and the reasons
2 therefor;

3 ____ was not requested by the deponent or a
4 party before the completion of the deposition.

5 I further certify that I am neither counsel
6 for, related to, nor employed by any of the parties or
7 attorneys to the action in which this proceeding was
8 taken. Further, I am not a relative or employee of any
9 attorney of record in this cause, nor am I financially
10 or otherwise interested in the outcome of the action.

11 Subscribed and sworn to on this
12 25th of January, 2019.

13
14
15 

16 _____
17 SHAUNA L. BEACH, RDR, CRR, CSR #8408

18 Expiration Date: 12/31/2019
19
20
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25

1 In Re: Dealer Management Systems Antitrust Litigation v.

2 Robert Brockman

3 INSTRUCTIONS TO THE WITNESS

4 Please read your deposition over
5 carefully and make any necessary corrections.
6 You should state the reason in the
7 appropriate space on the errata sheet for any
8 corrections that are made.

9 After doing so, please sign the errata
10 sheet and date it.

11 You are signing same subject to the
12 changes you have noted on the errata sheet,
13 which will be attached to your deposition.

14 It is imperative that you return the
15 original errata sheet to the deposing
16 attorney within thirty (30) days of receipt
17 of the deposition transcript by you. If you
18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in
20 court.

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24 3185059
25

In Re: Dealer Management Systems Antitrust Litigation v.

Robert Brockman

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1 In Re: Dealer Management Systems Antitrust Litigation v.

2 Robert Brockman

3 ACKNOWLEDGMENT OF DEPONENT

4 I, _____, do
5 hereby certify that I have read the foregoing
6 pages and that the same is a correct
7 transcription of the answers given by
8 me to the questions therein propounded,
9 except for the corrections or changes in form
10 or substance, if any, noted in the attached
11 Errata Sheet.

12
13 _____
14 DATE

13 _____
14 SIGNATURE

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)
IN RE: DEALER MANAGEMENT) MDL NO. 2817
SYSTEMS ANTITRUST)
LITIGATION,) CASE NO. 18 C 864
)

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN, VOL 2
Highly Confidential - Attorneys' Eyes Only
January 17, 2019

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN,
VOLUME 2, produced as a witness at the instance of the
PLAINTIFF(S), and duly sworn, was taken in the
above-styled and numbered cause on the 17th day of
January, 2019, from 9:07 a.m. to 4:43 p.m., via
telephone, before Shauna L. Beach, RDR, CRR, CSR in and
for the State of Texas, reported by machine shorthand,
at the law offices of Gibbs & Bruns, LLP, 1100
Louisiana, Suite 5300, Houston Texas 77002, pursuant to
the Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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and Reynolds Company

Ben Harwood, Videographer

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| | | inadvertent mis-numbering of exhibits at the deposition of Ronald | |
| 17 | 17 | Lamb, causing a duplication of exhibits | |
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. Today is
3 January 17th, 2019. We're on the record at 9:07 a.m.
4 This is the continued recorded deposition of Mr. Robert
5 Brockman in the matter of In Re: Dealer Management
6 Systems Antitrust Litigation in the United States
7 District Court for the Northern District of Illinois in
8 the Eastern Division.

9 My name is Ben Harwood, and I'm the
10 videographer present on behalf of Veritext. The court
11 reporter is Shauna Beach, also present on behalf of
12 Veritext. This deposition is being held at Gibbs &
13 Bruns, LLP, located at 1100 Louisiana Street, Suite
14 5300, in Houston, Texas, ZIP Code 77002.

15 Will counsel please state their appearance
16 and firm affiliation for the record.

17 MS. WEDGWORTH: Peggy Wedgworth, from
18 Milberg Tadler Phillips Grossman, on behalf of
19 Dealership Class Plaintiffs.

20 MR. HUGHES: John Hughes, Milberg Tadler
21 Phillips Grossman, representing Dealership Class
22 Plaintiffs.

23 MR. NEMELKA: Mike Nemelka from Kellogg
24 Hansen, representing the Individual and Dealership Class
25 Plaintiffs, and with my colleague, Joe Long.

1 MS. GULLEY: Andi Gulley, from Gibbs &
2 Bruns, representing Mr. Brockman and the Reynolds and
3 Reynolds Company.

4 MR. WILKINSON: Brice Wilkinson, also with
5 Gibbs & Bruns.

6 MR. COHEN: Michael Cohen, with Sheppard
7 Mullin, representing the defendant, the Reynolds and
8 Reynolds Company and the witness, Mr. Brockman.

9 MR. RYAN: Mark Ryan, from Mayer Brown, on
10 behalf of CDK Global.

11 THE VIDEOGRAPHER: Will the court reporter
12 please swear in the witness and we may proceed.

13 ROBERT THERON BROCKMAN,
14 having been first duly sworn, testified as follows:

15 EXAMINATION

16 BY MS. WEDGWORTH:

17 Q. Good morning, Mr. Brockman. As we started
18 yesterday, I'll just ask you -- all of the rules we put
19 in place yesterday, are you okay with continuing those
20 same rules today?

21 A. Yes, ma'am.

22 Q. So if you answer a question, I'll assume you
23 understand the question. Is that fair?

24 A. Yes, ma'am.

25 Q. And if you don't understand, please, let me

1 know and I'll restate the question. And if you need to
2 take a break at any time, please, let me know. I'm
3 happy to take a break as long as there's a question not
4 pending. I'll ask that you answer the question before
5 we take a break, if that -- can you agree to that?

6 A. Yes, ma'am.

7 Q. Okay. I wanted to start today on a different
8 topic of converting dealerships. When they convert
9 DMSs, does Reynolds track all dealerships who convert
10 DMSs -- or switch DMSs?

11 MS. GULLEY: Form.

12 A. I'm sorry. I don't understand.

13 Q. (By Ms. Wedgworth) Well, when a dealership
14 switches, say, from a Reynolds DMS to a CDK DMS, does
15 Reynolds track that conversion?

16 MS. GULLEY: Form.

17 A. That's not -- we consider that a -- a lost
18 customer. The concept of conversion is not part of
19 anything that we keep track of.

20 Q. (By Ms. Wedgworth) So Reynolds --

21 A. When you lose a customer, I mean, it's implied
22 that there's a -- obviously, there has to be a
23 conversion involved, I suppose, so we don't think about
24 it -- it in those terms. And therefore, I can't say
25 that -- that we track conversions. We track lost

1 customers.

2 Q. When a dealership -- do you call it "converts"
3 or "switches"?

4 A. We use either term.

5 Q. So when a dealership converts DMS, there are
6 risks, correct, to the dealership?

7 MS. GULLEY: Objection; form.

8 A. A risk?

9 Q. (By Ms. Wedgworth) Risk, yes. Risk in loss of
10 sales, loss of customers, loss of employees, are there
11 risks when a DMS switches -- when a dealership switches
12 DMS?

13 MS. GULLEY: Objection; form.

14 A. I don't know that I would characterize it as
15 risk. There's certain overhead that is involved,
16 because the dealership's employees have to learn new
17 software. And I'm sure you've been through situations
18 where you had to change from one software package to
19 another software package.

20 You know, you've got to learn how -- it's
21 kind of like I have a new iPhone, and I -- I've never
22 had iPhones before. I've always had Androids. And
23 it's, you know, quite different. And so therefore,
24 there's overhead. I wouldn't call that "risk."

25 Q. (By Ms. Wedgworth) Is it fair to say that in

1 the first year or two after a DMS conversion by a
2 dealership, there is employee turnover at the dealership
3 in nearly all cases?

4 MS. GULLEY: Objection; form.

5 A. I would not agree that that has anything to do
6 with conversions. Turnover in dealerships is
7 astronomical. For instance, in the sales department in
8 the dealership, 100 percent turnover a year is quite
9 common. It's not that high a percentage in other parts
10 of the dealership, but as an industry, the turnover by
11 -- by my standards is horrible.

12 Q. (By Ms. Wedgworth) And is some of that
13 turnover for some dealerships a factor of a DMS
14 conversion?

15 MS. GULLEY: Objection; form.

16 A. Ma'am, I -- I don't know that I can say that.
17 You know, certainly a conversion that -- that goes
18 poorly -- frankly, the principal reason for a conversion
19 going poorly is the people refuse to learn the new
20 software.

21 Q. (By Ms. Wedgworth) And that's a cost for the
22 dealership; correct?

23 MS. GULLEY: Form.

24 A. Certainly if the dealership personnel will not
25 learn the new software, which causes the conversion to

1 not go as smoothly as it should, certainly that's a cost
2 to the dealership.

3 Q. (By Ms. Wedgworth) Is it fair to say that for
4 some dealerships, switching DMS can take years to
5 recover from?

6 MS. GULLEY: Objection; form.

7 A. I think that that would be not a fair
8 statement. There's certainly -- that has happened, you
9 know -- you know, several times in my experience in the
10 business, but it's not -- it does not generally happen.

11 Q. (By Ms. Wedgworth) Is it fair to say that
12 there is employee turnover after a dealership switches
13 DMS?

14 MS. GULLEY: Objection; form.

15 A. I personally don't believe that, any more than
16 usual, which is horrible. The turnover by itself,
17 absent anything, is -- is unsatisfactory, in my opinion.

18 Q. (By Ms. Wedgworth) Is it fair to say there's
19 customer disruption after a dealership switches DMS?

20 MS. GULLEY: Objection; form.

21 A. Again, I think the source of disruption
22 would -- would occur not because the conversion itself,
23 but because of the -- the poor attention that dealership
24 employees pay to learning the new system. It is -- it's
25 one of our -- our chief problems in the business.

1 Q. (By Ms. Wedgworth) So when a dealership is
2 considering switching DMS, they have to consider whether
3 or not their employees can efficiently integrate into
4 the new system; is that correct?

5 MS. GULLEY: Objection; form.

6 A. That is a correct statement.

7 Q. (By Ms. Wedgworth) Is it fair to say that if a
8 dealership does choose to convert, that that conversion
9 cannot be done quickly?

10 MS. GULLEY: Objection; form.

11 A. No, I don't agree with that. The -- the
12 conversion process, you know, properly done, where the
13 dealership personnel do what they're supposed to do as
14 far as learning the new system, that -- that conversion
15 can go very quickly. And again, I'll repeat again, if
16 they're not diligent in learning the new software,
17 conversion process can drag on until they finally, you
18 know, give up and decide to accept the new system and to
19 learn it.

20 Q. (By Ms. Wedgworth) And when you say "drag on,"
21 sometimes that can be up to two years; correct?

22 MS. GULLEY: Objection; form.

23 A. No, I think that would be more -- more -- more
24 on the line of two to three months.

25 Q. (By Ms. Wedgworth) So when you say "drag on,"

1 you don't mean longer than two or three months?

2 MS. GULLEY: Objection; form.

3 A. That's correct, ma'am.

4 Q. (By Ms. Wedgworth) If a dealership changes
5 DMS, they may have to acquire new servers; correct?

6 A. That's correct.

7 Q. And they may have to acquire new printers;
8 correct?

9 A. Typically not new printers. Printers are
10 pretty much universal pieces of equipment and,
11 especially since everything is laser printers now, laser
12 printers are very standard.

13 Q. So it's not typical when you change DMS that
14 you would have to, as a dealer, acquire new printers?

15 A. That's correct.

16 Q. And are -- is there other equipment that
17 dealers would have to acquire when they change DMSs?

18 MR. RYAN: Object to the form.

19 A. No. PCs are, again, you know, very much
20 standardized, and whatever PCs they've got, work. I
21 personally think that it's very advantageous to acquire
22 a second monitor for users -- second monitors are \$200.
23 We don't even sell them. Efficiency goes way up when
24 you go from, you know, one monitor to two monitors. And
25 that happens a lot in our installations, but it's just

1 because we -- we -- you know, tell the dealer, look, if
2 you want to have 20 percent more productivity, give
3 people a second monitor. But that's not a requirement.

4 Q. (By Ms. Wedgworth) If a dealership changes
5 DMS, they also have to get their data transferred from
6 the old DMS to the new DMS; correct?

7 A. That's correct.

8 Q. And it can take months for the staff at a
9 dealership to get comfortable with that new DMS once the
10 data is transferred over; correct?

11 MS. GULLEY: Form.

12 A. Again, I -- I think that varies greatly by
13 individual. But in -- from a general statement,
14 dealership personnel don't stand up and cheer -- jump up
15 and down about having to learn a new system any more
16 than you would. It -- it's something that you -- you
17 got to concentrate on, you got to pay attention and you
18 got to do it.

19 Q. (By Ms. Wedgworth) It's a complicated process;
20 is that fair?

21 MS. GULLEY: Form.

22 A. It's not a complicated process. The complexity
23 isn't -- people just are sitting in a chair and doing
24 it.

25 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you

1 what's been marked as Plaintiff's Exhibit 657.

2 (Exhibit 657 was marked for
3 identification.)

4 MS. WEDGWORTH: And for the record, it's a
5 document Bates-stamped REYMDL00244021 through 025. Have
6 you had a chance to review the document?

7 A. Yes, ma'am.

8 Q. (By Ms. Wedgworth) Is -- is this an email you
9 wrote to Mr. Lamb around September 1st, 2015?

10 A. Yes, ma'am.

11 Q. And in this email, did you try to be truthful
12 and accurate?

13 A. Yes, ma'am.

14 Q. So the attachment to the email is a letter
15 dated November 24, 2014, addressed to Mr. Rick Hendrick
16 and is signed by Ron Lamb. Do you remember reviewing
17 this letter?

18 A. Yes, ma'am.

19 Q. And is Mr. Hendrick an owner of the largest
20 automotive group -- I'm sorry -- the largest client of
21 Reynolds?

22 A. I'm not sure it's the largest client. It, for
23 sure, is the largest privately owned group in the
24 country.

25 Q. Are you aware of any client for Reynolds that's

1 larger than Hendrick?

2 A. I believe at that point in time, the Penske
3 organization is -- and still is, because they're the
4 second largest publicly owned group in the country.

5 Q. And if we look at your email at the 1st to
6 Mr. Lamb, you write, "Ron, the first half of this letter
7 is brilliant. I made just a slight addition." Do you
8 see that, at the email you wrote to Mr. Lamb? First
9 sentence?

10 "The first half of this letter is
11 brilliant. I made just a slight addition." Do you see
12 that?

13 A. I saw it. But now I'm trying to --

14 Q. On the first page, right under the --

15 A. Okay. Yes, I found -- I found it.

16 Q. And -- and you say, "The first half of the
17 letter is brilliant. I made just a slight addition."
18 And then you say, "However starting with 'Upgrade and
19 Grow', it loses fire." Do you see that?

20 A. Yes, ma'am.

21 Q. So if we go to the letter, the first page of
22 the letter, under the heading -- this is a letter that
23 Mr. Lamb wrote to Mr. Hendrick at a time when Hendrick
24 was considering moving from Reynolds to CDK; is that
25 correct?

1 MS. GULLEY: Objection; form.

2 A. Yes, ma'am.

3 Q. (By Ms. Wedgworth) And, in trying to keep the
4 business, Mr. Lamb sends this letter to Mr. Hendrick; is
5 that correct?

6 A. Yes, ma'am. I think it was primarily intended
7 for Mr. Brown. Mr. Hendrick, at that point in time, was
8 not actively involved in -- in this process. He was
9 the -- the titular head.

10 But as you may or may not be aware, he's
11 very involved in stock car racing and, at this point in
12 time, he was fully consumed in running the stock car
13 racing operation, not the dealership management
14 operation. Mr. Brown was in -- in charge of that.

15 Q. And Mr. Brown's title at Hendrick is -- do you
16 know?

17 A. He was president of the automotive group.

18 Q. And in trying to keep the business of the
19 Hendrick automotive group, Mr. Lamb writes this letter
20 to Mr. -- I'm sorry -- Mr. Lamb writes the letter to
21 Mr. Hendrick and Mr. Brown; correct?

22 A. Yes.

23 Q. And in this letter, on the first page, halfway
24 down the page, there are "Convert with Risks" where
25 Mr. Lamb writes, "Converting 95 dealerships and 29

1 collision centers is a major project with serious
2 risks." Do you agree with that statement?

3 MS. GULLEY: Objection; form.

4 A. Yes, ma'am. The sheer size of it is -- is what
5 makes it, you know, challenging. It's one thing to
6 convert one dealer or two dealers or four dealers or a
7 dozen dealers, whatever, but to convert 95 and 29
8 collision centers, the sheer scale, you know, causes it
9 to be a -- a very serious project and with risks.

10 Q. (By Ms. Wedgworth) One of those risks is it
11 would take -- likely take years to recover?

12 MS. GULLEY: Form.

13 A. Well, again, the issue is -- as I've -- as I've
14 previously stated, is that the training and education of
15 personnel is -- is the biggest problem, by far, in
16 conversions. And if you have, you know, 95 sets of
17 personnel, with each dealership has its own personnel
18 structure that has to be, you know, taught, they have
19 to, you know, accept the fact that change is going to
20 happen. Get serious about learning the new software.
21 Again, if you take that project for one dealer or two
22 dealers or five dealers -- it's just way greater if it's
23 95. And that -- that causes, you know, the risk
24 quotient to go up.

25 Q. (By Ms. Wedgworth) Even at one dealer, though,

1 you have the same issue of training the personnel;
2 correct?

3 A. Yes. But it's much smaller. It could be, for
4 instance, the number of people around this table.

5 Q. Well, it also depends on the size of that
6 dealership originally as well; correct?

7 A. That's correct.

8 Q. But here, Mr. Lamb says, "It will likely take
9 years to recover." You agree with that, right?

10 MS. GULLEY: Form.

11 A. In this particular situation, the level of risk
12 was such that, because of the number of people that have
13 to be trained, it could take -- assuming it went wrong,
14 it could take quite a while.

15 Q. (By Ms. Wedgworth) The last sentence on this
16 page says -- Mr. Lamb writes, "Reynolds tracks all
17 dealerships who convert using publicly available data."
18 Do you see that?

19 A. Yes, I do.

20 Q. Do you agree with that statement?

21 A. I think that -- that the statement is -- is
22 somewhat less than complete, because publicly available
23 data -- I think that the -- the number of dealerships
24 that are public is less than ten. I think the number is
25 actually, like, seven. And so while "Reynolds tracks

1 all dealerships who convert using publicly available
2 data" -- it sounds like a lot of dealers, but it's not.
3 It's -- it's really only seven or eight.

4 Q. So in this letter that Mr. Lamb writes to the
5 Hendrick Automotive, he's less than complete on this
6 statement?

7 MS. GULLEY: Objection; form.

8 A. No. I think the -- the state- -- the statement
9 as written is true, okay?

10 Q. (By Ms. Wedgworth) And complete?

11 MS. GULLEY: Objection; form.

12 A. Well, when you say "complete," as a sentence,
13 it certainly is complete. Is it -- is it a paragraph,
14 or is it a page that describes everything that go --
15 goes into this statement? No, it's not.

16 Q. (By Ms. Wedgworth) Well, you commented that
17 the first half of this letter was brilliant. Do you
18 still stand by that?

19 MS. GULLEY: Objection; form.

20 A. Well, first of all, I didn't detect any
21 spelling errors and, you know, that pleased me a lot.
22 Salespeople are not necessarily the greatest as far as
23 grammar and, you know, punctuation and spelling and that
24 sort of thing.

25 I thought it was brilliant in that it

1 identified the key issues, specifically, the fact that
2 we had a windows-based DMS. And even more specifically,
3 that it talks about the products that we have that are
4 extremely profitable for the dealer, which are --
5 docuPAD is, perhaps, the leading one.

6 Q. (By Ms. Wedgworth) If we go to the next page
7 of the letter, at the top, it says, "Here are examples
8 of when a group converts from Reynolds." Do you see the
9 chart at the top of the page?

10 And then underneath -- and it lists
11 Herb's -- Herb Chambers, Prestige Management Services
12 and Ed Morse and other auto dealerships. Do you see
13 that?

14 A. Yes, I do.

15 Q. And then Mr. Lamb writes, "In nearly all cases,
16 there is a significant drop in sales, which is expected
17 the first year or two of a conversion given all the
18 employee turnover and customer disruption." Do you see
19 that?

20 A. Yes, I do.

21 Q. Do you agree with that statement?

22 A. I think, certainly, you can pick out cases
23 where, you know, that -- that has been a -- a true
24 statement. And certainly in these cases here -- I know
25 some of these customers. Their problem was -- and

1 that's they had, you know, turnover at the top, change
2 in -- in dealership, you know, leaders. I don't know
3 that that's the case in all of them, but I believe from
4 a statistical standpoint, you know, the stats that are
5 shown here are true. But to say that they're -- they're
6 completely the result of -- of a conversion, it could be
7 true; it could not be true.

8 Q. Well, you stand by the statement Mr. Lamb wrote
9 in this letter, don't you?

10 MS. GULLEY: Objection; form.

11 A. Yes, I do. These -- these statistics -- or
12 these particular dealerships are a matter of public
13 record.

14 Q. (By Ms. Wedgworth) So is it fair to say, in
15 nearly all cases, there is a significant drop in sales,
16 which is expected the first year or two of a conversion,
17 given all the employee turnover and customer disruption?

18 MS. GULLEY: Objection; form.

19 A. I -- I think that -- that there's no question
20 that the statistics that are shown for these dealerships
21 are true. I don't agree that one can necessarily infer
22 that all situations, that, you know, that's what's
23 happening.

24 Q. (By Ms. Wedgworth) Well, you approved this
25 letter in this statement going to Hendrick Automotive

1 Group; correct?

2 MS. GULLEY: Objection; form.

3 A. Yes, I did.

4 Q. (By Ms. Wedgworth) The next sentence says,
5 "What is really surprising is these groups have not
6 recovered." Do you see that?

7 A. Yes.

8 Q. And do you recall that these groups listed
9 above, where they drop in sales from one year over the
10 next, have yet to recover?

11 A. That, I -- I don't have knowledge of.

12 Q. So the last one on the chart, Gordon Auto
13 Group, it had a conversion year in 2009. Do you see
14 that?

15 A. Yes, I do.

16 Q. And then last year Aut- -- Automotive News
17 ranked them as 110. And in 2014, which is -- appears to
18 be the most recent data for this letter -- they're at
19 142 with a change, according to this chart, of going
20 down 32 places. Do you see that?

21 A. Yes, I do.

22 Q. Okay. And in this chart, Mr. Lamb is
23 representing to Hendrick Automotive Group that the
24 conversion had something to do with their lowering in
25 rank of sales; correct?

1 A. That's what it's saying. I have a little bit
2 different belief as far as changes in Automotive News
3 ranking. Dealerships are inherently very competitive
4 people. And the -- the standard of measurement between
5 dealerships is typically number of cars sold, number of
6 vehicles sold.

7 It happens continuously in this industry
8 where a dealer will want to have his name in lights as
9 far as his ranking is concerned, and so he'll do
10 whatever it takes to sell more cars, which means he cuts
11 price. And he gets his name in lights, and he gets his
12 Automotive News ranking up, and then he decides he's not
13 making enough money. And then he decides to tighten up
14 on discounting and not to try to sell everybody every
15 car.

16 But his -- so the sales numbers go down,
17 but his profit -- his internal profit numbers -- go way
18 up. And then they kind of -- like this (indicating).

19 Q. And in spite of all that, Mr. Lamb -- with your
20 approval, saying it was "brilliant" -- quotes Automotive
21 News ranking with regard to sales in order to convince
22 Hendrick to not convert; is that correct?

23 MS. GULLEY: Form.

24 A. What I'm saying is -- and that's that,
25 certainly, conversion issues, particularly with -- with

1 big conversions, are a problem. But what I'm saying is
2 there's -- there's other factors that have to do with
3 Automotive News ranking, and other motivations, other
4 reasons.

5 Q. (By Ms. Wedgworth) Is it fair to say that, for
6 some dealerships who convert, it takes at least one to
7 two years to recover?

8 A. Certainly if they don't educate their people
9 properly. If they don't force their people to learn the
10 new software promptly, you know, that can occur.

11 Q. You mentioned docuPAD in your previous answer
12 and some yesterday. If a dealership buys a docuPAD, is
13 it -- is the price for that purchase and installation
14 somewhere around \$10,000 per unit?

15 MS. GULLEY: Form.

16 A. Yes, it is.

17 Q. (By Ms. Wedgworth) And is there a monthly
18 maintenance fee per docuPAD of \$1,000 a month?

19 A. Yes, ma'am.

20 Q. And as to any change on any form used on the
21 docuPAD, is there a cost of -- of around \$300 for any
22 change?

23 A. I disagree that that's for any change. A whole
24 brand-new document, like, for instance, a new finance
25 contract, the charge would be in that area. But to say

1 that any change is in that area, that would not be
2 correct.

3 Q. Can any change with regard to any docuPAD
4 document be made for free at Reynolds?

5 A. To the best of my knowledge, unless we have
6 done something in error, in which case we would adjust,
7 or if -- if the entity that produced the contract in the
8 first place, if it was not working, you know, correctly
9 after installation, we would fix that at no charge. But
10 other than those kind of situations, it would be a
11 charge.

12 Q. Is the average charge for any change on any
13 document or form with regard to docuPAD roughly \$300?

14 A. I -- I don't know that there is an average. We
15 don't keep that. You know, there's not a stat that --
16 you know, that I know of or ever seen.

17 Q. Well, would it surprise you to say that -- I've
18 heard dealers say that, for any change, when you use the
19 docuPAD, everything is \$300?

20 A. Ma'am, dealers will say most anything on any
21 given day.

22 Q. Well, does it surprise you they say any change
23 is \$300 on a docuPAD form or document?

24 MS. GULLEY: Objection. I'm sorry.

25 Objection; form.

1 DEFENSE COUNSEL: Objection. (Inaudible.)

2 A. Again, ma'am, you know, dealers are prone day
3 to day to say almost anything. And I -- I have been in
4 this business now -- the 10th of January this year, I've
5 been at it 53 years. And I -- I haven't seen it all,
6 but I've seen a lot. And one of the things is -- is
7 dealers will say most anything.

8 Q. (By Ms. Wedgworth) If a dealership has
9 Reynolds DMS and switches out of Reynolds, can they
10 return the docuPAD and get a credit on an account?

11 A. No, ma'am.

12 Q. Can they sell the docuPAD?

13 A. Yes, ma'am.

14 Q. To -- can they sell it to another dealership
15 who could then use it?

16 A. Yes, ma'am.

17 Q. And are you aware of any -- any incidences like
18 that?

19 A. I think I've been exposed to just one. You
20 know, docuPAD is a -- an amazing profit producer. I
21 don't know whether you've ever bought a car, you know,
22 and been through the docuPAD experience and contrast
23 that with a typical, you know, finance and information
24 manager's, you know, closing techniques.

25 You know, docuPAD takes that all away. It

1 is completely user driven in that you interact with --
2 you know, the screen, with the stylus. And you make
3 your choices with no pressure, you know, from the
4 finance manager. And customers love it. The reason why
5 dealerships love it is -- and that's because customers
6 have a chance to choose. And a miracle occurs; they buy
7 more.

8 And that's the reason why docuPAD produces,
9 you know, profits on the average of \$200 per trans- --
10 per vehicle sales transaction. And if you have a -- a
11 typical finance manager will handle on the order of 70
12 transactions a month. At \$200 additional profit, that's
13 \$14,000 a month, which means that you recover the
14 initial cost of docuPAD very, very quickly. And then
15 from that point on, it is a massive generator of
16 profits.

17 We have dealers that are willing to, you
18 know, have their picture in Automotive News and
19 advertisements and say, "docuPAD paid for my entire
20 Reynolds bill," which is --

21 You know, I didn't invent docuPAD, but I
22 saw it and bought it. And the results of -- are nigh on
23 miraculous.

24 MS. WEDGWORTH: Move to strike.

25 Q. (By Ms. Wedgworth) Mr. Brockman, my question

1 was simply: Are you aware of any incidents like that,
2 where a dealership can sell their docuPAD? That was my
3 question. It was -- it was straightforward. "Yes" or
4 "no"?

5 MS. GULLEY: Form.

6 A. Yes.

7 Q. (By Ms. Wedgworth) And you said there was one
8 occasion; is that right?

9 MS. GULLEY: Form.

10 A. Well, there's one that I know of.

11 Q. (By Ms. Wedgworth) Now, you've had a chance to
12 review this letter that was sent by Mr. Lamb to Hendrick
13 Automotive Group. Is there anything in the letter that
14 you're aware of that's inaccurate?

15 MS. GULLEY: Objection; form.

16 A. I would want to read it again.

17 Q. (By Ms. Wedgworth) Well, I'm not asking you to
18 read it again. As you reviewed it, did -- did anything
19 stick out as being inaccurate to you?

20 MS. GULLEY: Objection to the form and
21 instruction.

22 A. Ma'am, I would really like to read it one more
23 time.

24 Q. (By Ms. Wedgworth) Well, then let's put it
25 aside and we can go on to the next document.

1 With regard to the Reynolds DMS contract,
2 do you know the average length of the -- the DMS
3 contract that a dealer signs today?

4 A. We don't keep an average number. That's not a
5 stat that I keep or have kept. What we see is -- and
6 this is just a general, you know, observation, it's not
7 at all a scientific average. Typically, you know, five
8 years to seven years. It is rarely less than that.

9 Q. Does Reynolds offer a contract -- DMS contract
10 to dealers less than five years?

11 A. We don't offer one. In some cases, you know,
12 we end up negotiating the one that -- where the length
13 of contract relates to the whole process of -- of buying
14 a DMS system is -- and that's the -- the level of
15 discount that the dealership will achieve, it will be
16 based upon the length of the contract. And that
17 short-term contracts -- we'll say a 36-month contract --
18 of the discount is appreciably less. And the dealer has
19 a choice. They can go for a short-term contract, or
20 they can go for a long-term contract; they get a better
21 discount.

22 Q. Are there any DMS contracts at Reynolds longer
23 than seven years?

24 A. Yes, ma'am.

25 Q. What's the longest contract that Reynolds has

1 with the dealership concerning DMS?

2 MS. GULLEY: Objection; form.

3 A. I -- I can't speak to what's the longest. I
4 have seen them ten years and, in some cases, a little
5 over ten years. But that's not a -- that's not a
6 complete statement, because I don't see every contract.
7 I just see some.

8 Q. (By Ms. Wedgworth) Does Reynolds track the
9 tenure that a dealership stays with Reynolds?

10 A. No. We have no process for doing that. The
11 only way to know is -- and that's to go to the contract
12 file and see what prior contracts are in the contract
13 file. We don't -- we don't produce any reports in -- in
14 that regard.

15 Q. And have you ever tried to determine
16 the average tenure of a Reynolds dealership?

17 A. No, ma'am, I have not.

18 Q. Anyone at Reynolds tried that?

19 MS. GULLEY: Objection; form.

20 A. Again, no way of knowing.

21 Q. (By Ms. Wedgworth) Well, you said you could
22 look at the contracts and make that determination?

23 MS. GULLEY: Objection; form.

24 A. Yes, ma'am.

25 Q. (By Ms. Wedgworth) And no one at Reynolds has

1 done that?

2 A. There's not been any --

3 MS. GULLEY: Objection; form.

4 A. -- any, you know, orchestrated plan or project
5 to go determine, you know, what the tenure is. On an
6 individual basis, at contract renewal time, it may come
7 up that this customer has been a customer for 22 years.

8 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you
9 what's been marked as Plaintiff's Exhibit 658.

10 (Exhibit 658 was marked for
11 identification.)

12 MS. WEDGWORTH: Which is Bates-stamped
13 REYMDL00045348.

14 Q. (By Ms. Wedgworth) Have you had a chance to
15 review the document?

16 A. Yes, ma'am.

17 Q. Is GuesTraq a third party here?

18 A. Yes, I believe they are a third party.

19 Q. And does this email reflect -- is this an email
20 you wrote to Mr. Schaefer in response to an email he
21 sent you on or about April 23rd, 2015 and April 30th,
22 2015?

23 A. It appears to -- that to be correct. Frankly,
24 I don't remember this particular situation.

25 Q. So GuesTraq doesn't ring a bell to you as you

1 sit here?

2 A. No, ma'am.

3 Q. Do you have any reason to believe this -- that
4 you didn't receive and write this email?

5 MS. GULLEY: Objection; form.

6 A. No, ma'am. I -- I presume it is. It's not a
7 forgery. I -- I have no reason to -- to believe that
8 it's not accurate. But I -- I don't remember anything
9 about -- GuesTraq is -- must be some very minor entity,
10 because I sure don't remember anything about it. I
11 don't know what it does.

12 Q. (By Ms. Wedgworth) Is this an example of you
13 granting exemption -- an exemption to a third party?

14 MS. GULLEY: Objection; form.

15 A. I'd say, based on -- on what's in bold -- what
16 I'm saying here -- and that's that I don't want to
17 invest the time and trouble right now which, I would
18 presume, that applies to an RCI interface.

19 Q. (By Ms. Wedgworth) So it's fair to say that
20 you are granting an exemption to GuesTraq here?

21 MS. GULLEY: Objection; form.

22 A. Well, there's -- there's -- to discuss that,
23 you've got to look at this next-to-the-last sentence,
24 where it talks about Query Builder. Query Builder is
25 a -- a piece of software. It is -- it's a reporting

1 software. It's not really very good. It's been around
2 for quite a while. And we're -- we've created a much
3 better set of reporting software, and we're endeavoring
4 to, you know, get Query Builder phased out.

5 And in that kind of situation, there's --
6 there's always times when it arises when somebody is
7 using Query Builder and we'd rather they not use Query
8 Builder because we want to get rid of all Query Builder
9 usage. We want to delete that software, because we have
10 better software. We don't want to continue to maintain,
11 you know, very, very old and obsolete-type -- type
12 software.

13 And so the question is, typically: Do
14 these people convert to an RCI? And that's what it
15 looks like is the case here. And what I'm saying is --
16 in this -- I don't want to put them through RCI, you
17 know, because that's -- that's a development effort.
18 Instead, for the time being, let them continue operating
19 the way they're operating.

20 Q. (By Ms. Wedgworth) So you approve the ongoing
21 exemption for GuesTraq; correct?

22 A. Yeah. Temporarily.

23 Q. And do you limit the time of the exemption in
24 this email?

25 A. Not in this email. I worked very closely with

1 Mr. Schaefer, and he understands what I'm doing is --
2 and that's that I -- I'm being forced into a situation
3 of expediency due to development processes.

4 Q. You can set that aside. I want to talk a
5 little bit about ODE, Open Dealer Exchange. Are you
6 familiar with that organization?

7 A. Yes, ma'am.

8 Q. And it's a joint venture between Reynolds and
9 CDK; is that correct?

10 A. That's correct.

11 Q. Do Reynolds and CDK each own 50 percent of ODE?

12 A. That's correct.

13 Q. How did that come about, ODE?

14 MS. GULLEY: Objection; form.

15 Q. (By Ms. Wedgworth) How did ODE come about?

16 MS. GULLEY: Objection; form.

17 A. I think it came about by the fact that there's
18 a -- a process in the -- in the dealership world. It's
19 like this: You have a prospect that comes into the
20 dealership. They're looking for a certain kind of
21 vehicle. You have some of those type that they're
22 looking for: different colors, different trim levels,
23 different options. You go out and you -- you walk the
24 inventory. And they get to visit the green one and the
25 red one and the blue one and the silver one. And

1 they -- they have different types of interiors, you
2 know, more leather and less leather.

3 But any rate, the prospect finally decides,
4 "I like this one here." And the car salesman's heart
5 kind of takes a leap for the good. They go back inside
6 to see if they can work out a deal. Well, an inherent
7 part of -- you know, a giant percentage of car sales
8 involves financing. I don't know what the number is,
9 but I wouldn't be surprised by an 80 or 90 percent car
10 sales transactions that involve financing where the
11 dealership has -- has to help get done.

12 So what happens is -- and that's the car
13 salesperson gets an authorization form signed by the
14 prospect to pull their credit. They pull their credit
15 and get their FICO score. And then they go shopping for
16 financing. And Dealertrack has built up a -- a nifty
17 application, and it's enjoyed very considerable success
18 with it. And what it does is -- and that's that you
19 enter the -- you know, the information about this
20 potential transaction, what kind of vehicle it is --

21 Q. (By Ms. Wedgworth) I'm focusing on ODE, not
22 Dealertrack.

23 MS. GULLEY: Just let him finish his
24 answer.

25 A. But you're asking me why ODE got started.

1 Q. (By Ms. Wedgworth) How ODE got started.

2 MS. GULLEY: Just let him finish his
3 previous answer.

4 Just go ahead and finish the answer.

5 A. The how, the first part about it is -- implies
6 the why. Okay?

7 Q. (By Ms. Wedgworth) Actually, it doesn't. It's
8 a how.

9 MS. GULLEY: Just let him finish.

10 MR. RYAN: Let me -- let me just -- I know
11 my object- -- her objections are good for me, but I
12 believe the question was: How did it come about? And I
13 think he's answering that question.

14 MS. GULLEY: Correct.

15 A. That's certainly what I'm trying to do.

16 MS. GULLEY: Go ahead and continue your
17 response.

18 A. In any rate, at this point, the salesperson
19 inputs the -- you know, the facts of the -- of the
20 transaction, which is the -- you know, the type of car,
21 what the sales price is, you know, what the down payment
22 is, what -- what the consumer's FICO score is. And they
23 can, with a -- not much more than a press of a button,
24 send that package of information to a potential lender.
25 And the lender can look at it and say "Yes" or "No" or

1 "Maybe," or "Maybe with a little more down payment, it
2 will work." Or "We need to have some more proof of
3 employment."

4 And it facilitates, you know, the whole
5 financing process. And Dealertrack has done a very good
6 job of -- of building that -- that product and has,
7 basically, a near monopoly on that process. And so
8 ODE's goal was, was to be able to replicate that process
9 and become successful in that marketplace.

10 Q. (By Ms. Wedgworth) Were you the decision maker
11 to enter ODE as a joint venture with CDK?

12 A. I was responsible for the Reynolds side.

13 Q. Did you contact CDK or did CDK contact you,
14 initially?

15 A. I don't specifically recall that, but I --
16 my -- my belief is -- and that's they contacted us.

17 Q. Who contacted you at CDK?

18 A. I don't think that the contact was directly
19 with me. It was -- it -- it was somebody else in our
20 organization.

21 Q. Who did you speak with about the joint venture
22 from CDK, initially?

23 MS. GULLEY: Objection; form.

24 A. I -- I would say that the -- the first
25 conversation, again, was not between me and CDK. It

1 was with other people in our organization, principally
2 over in the product planning area. And it was only
3 after that, that I had conversation. And the name that
4 I recall I had a conversation with was Ron Workman. He
5 was a senior vice-president.

6 Q. (By Ms. Wedgworth) Who at Reynolds, in product
7 planning, spoke to CDK concerning forming ODE?

8 A. Certainly one of the people that would have
9 been involved was Jon Strawsburg.

10 Q. Anyone other than Mr. Strawsburg?

11 A. I'm sure there was, but I can't remember
12 specifically.

13 Q. You -- you said yesterday that CDK is your
14 largest competitor; is that a fair statement?

15 A. That's correct.

16 Q. Why did Reynolds en- -- enter into a joint
17 venture with its largest competitor?

18 A. Well, it wasn't because they were our largest
19 competitor, I can assure you that. But in the situation
20 like this, one has to decide, is the opportunity, you
21 know, worth it? In this particular case, it appeared to
22 be worth it.

23 The other principal factor is -- and that's
24 that if you don't do it, what else might, you know, CDK
25 do. Who might they partner up with? Might they partner

1 up with somebody else, which would mean that we would be
2 forever locked out of this very attractive business that
3 Dealertrack has. And so the decision was -- and that's
4 we ought to proceed, but proceed carefully,
5 investigating, you know, the potential with ADP.

6 Q. Was ODE founded around 2009?

7 A. I don't remember the exact date, but it's been
8 a while.

9 Q. And the decision to proceed with CDK was made
10 by you?

11 A. Yes.

12 Q. And in making that decision, you said you spoke
13 to Mr. Workman at CDK?

14 MS. GULLEY: Objection; form.

15 A. That was one of the people that -- that I
16 talked to.

17 Q. (By Ms. Wedgworth) Who else at CDK did you
18 speak to?

19 MS. GULLEY: Objection; form.

20 A. I'm sorry. I -- I don't remember the names.
21 You know, I think that there's -- you know, there's
22 been -- I know there's been turnover in that
23 organization, but Ron Workman was the consistent person
24 throughout.

25 MS. GULLEY: Is this a good time for a

1 break?

2 MS. WEDGWORTH: Yes. Let's take a break.

3 THE VIDEOGRAPHER: The time is 9:57 a.m.,
4 and we're off the record.

5 (Short recess 9:57 to 10:17 a.m.)

6 THE VIDEOGRAPHER: The time is 10:17 a.m.,
7 and we're back on the record.

8 EXAMINATION (Continuing)

9 BY MS. WEDGWORTH:

10 Q. Mr. Brockman, focusing you back on ODE, have
11 CDK and Reynolds had meetings in person regarding ODE?

12 A. Yes, ma'am.

13 Q. How many?

14 A. Well, I -- I think in order to give the correct
15 answer on that -- are -- are we talking about meetings
16 where everybody that's involved are all together? Or
17 where some of the folks that are involved are all
18 together and some are on the phone? You know, which
19 definition of -- of "meeting," you know, would you like
20 me to answer?

21 Q. Well, ODE has board of directors' meetings;
22 correct?

23 A. That's correct.

24 Q. And are those board of directors' meetings in
25 person or by phone?

1 A. Typically, by phone.

2 Q. And are those -- how often do those board of
3 directors' meetings occur?

4 A. There -- there's not a -- a fixed schedule, but
5 my -- my guess is -- and that would be probably on -- on
6 a quarterly basis, you know, three or four times a year.

7 Q. So on a quarterly basis, ODE holds telephonic
8 board of directors' meetings; is this correct?

9 A. Not -- generally on a quarterly basis. It's
10 not a fixed, you know, first quarter, second quarter,
11 third quarter, you know.

12 Q. And have you participated in meetings with CDK
13 concerning ODE in person?

14 A. I have, but rarely.

15 Q. Approximately how many times?

16 MS. GULLEY: Form.

17 A. No more than once a year, if that. It -- it
18 typically revolves around NADA, because we are -- we
19 tend to all parties be present at NADA, and so we'll sit
20 down and talk for half an hour.

21 Q. (By Ms. Wedgworth) So at the NADA meetings,
22 which are -- that's an annual conference?

23 A. Yes, ma'am.

24 Q. Held in, usually, late January, coming up?

25 A. Coming up. I understand it's going to be Super

1 Bowl Weekend. It's going to be in San Francisco.

2 Q. So normally, at the NADA meetings, you meet
3 with CDK people con- -- to discuss ODE?

4 MS. GULLEY: Form.

5 A. Yes. And that meeting tends to be a very
6 informal meeting, because we're -- there's not --
7 there's no fixed agenda, there's no, you know, special
8 place or whatever. We just find time to, you know, get
9 together, you know, for a half hour or so.

10 Q. (By Ms. Wedgworth) And when you -- the last
11 time you met with CDK, who did you meet with?

12 MS. GULLEY: Objection; form.

13 A. The only person whose name I -- there's two
14 people: It was Steve Anenen and Ron Workman.

15 Q. (By Ms. Wedgworth) And other than you meeting
16 in person with CDK, do Reynolds people meet with CDK
17 people regarding ODE in person?

18 A. Yes. Yes.

19 Q. How often?

20 A. Again, there's no fixed schedule. It depends
21 on, you know, what projects are at hand. You know, so
22 it could be once or twice a year. It could be five,
23 six, seven times a year.

24 Q. Have you met with anyone from ODE at places
25 other than the NADA convention?

1 A. I think that I have, but I can't recall a
2 specific, you know, time or place. Steve Lloyds is
3 the -- is the, you know, the CEO of ODE. I talk to him
4 mostly on the phone or, you know, over Skype. But as
5 far as other people, I think I've -- I've been on
6 telephone calls with their head of software development,
7 Tom -- and I can't remember his last name right now.
8 That -- you know, maybe once a year.

9 (Exhibit 659 was marked for
10 identification.)

11 Q. (By Ms. Wedgworth) I'd like to show you what's
12 been marked as Plaintiff's Exhibit 659. My initial
13 question is: Have you seen this document before?

14 A. No, ma'am.

15 Q. You have not?

16 A. Not this specific document, I don't believe.

17 Q. The cover email says that Mr. Workman sent it
18 to you on December 24th, 2015. The cover email. Is
19 this an email you received from Mr. Workman on or about
20 December 24th, 2015?

21 MS. GULLEY: Objection; form.

22 A. Again, you know, this -- this cover email
23 with -- would tend to indicate that, but I honestly
24 don't recall, yeah, this specific email.

25 Q. (By Ms. Wedgworth) Do you have any reason to

1 believe that this is not the board meeting minutes
2 of ODE for December 2015?

3 MS. GULLEY: Form.

4 A. Ma'am, I don't have, you know -- you know,
5 clear enough memory of -- of that particular time, you
6 know, several years back. That's three years back.
7 This -- these are exactly what went on at -- it looks
8 like it, but... (Pause.)

9 Q. (By Ms. Wedgworth) There's someone here you
10 haven't mentioned for CDK: Bihner -- Bihner,
11 B-i-h-n-e-r. Do you know Mr. Bihner?

12 A. I have been on telephone conversations with
13 him, but I don't know. I think his first name is Joe.
14 But I've -- I've -- and I may have met him at NADA and
15 shaken hands with him, but I -- I couldn't pick him out
16 of a crowd.

17 Q. And Mr. Bihner is a CDK person?

18 A. Yes.

19 Q. Manager?

20 A. I would think, maybe, perhaps he might even be
21 an officer.

22 Q. And for R&R, on these board meeting minutes has
23 Mr. Pontis listed. Is he also someone from Reynolds who
24 interacts with CDK concerning ODE?

25 A. Yes. He works for Jon Strawsburg.

1 Q. You can put that aside.

2 Is there any reason to believe that these
3 minutes are inaccurate?

4 MS. GULLEY: Objection; form.

5 A. No, ma'am.

6 Q. (By Ms. Wedgworth) Now, Reynolds also has a
7 relationship with CDK concerning CDR; correct?

8 MS. GULLEY: Form.

9 A. Yes, ma'am.

10 Q. (By Ms. Wedgworth) And that relationship is,
11 again, a joint venture between Reynolds and CDK?

12 A. That's my understanding. I -- I'm not --
13 generally much less familiar with CVR, because that
14 is something that was entered into considerably before
15 my time at Reynolds. And it is, you know, completely
16 controlled by CDK, because they have the -- the dominant
17 ownership interest.

18 Q. And CVR is 80 percent owned by CDK and 20
19 percent owned by Reynolds; is that correct?

20 A. That's my understanding. Although I'm not in a
21 position where I can say for sure that's exactly how it
22 is, because I was not there when it was -- when it was
23 founded.

24 Q. So other than ODE and CVR, does Reynolds have
25 any other formal relationships with CDK?

1 MR. RYAN: Objection.

2 A. I don't think so.

3 Q. (By Ms. Wedgworth) Does Reynolds have any
4 informal relationships with CDK currently?

5 MS. GULLEY: Objection; form.

6 A. Yes. Probably one.

7 Q. (By Ms. Wedgworth) What is that?

8 A. It is a -- again, this is something that, you
9 know, began considerably before my time. But I came --
10 became aware of its existence, you know, after we
11 acquired Reynolds. It has to do with -- when a customer
12 decides to leave, you know, one of us, as long as that
13 customer pays all their bills, honors all of their
14 contractual obligations, we will turn over to the
15 assuming company copies of data files for that
16 dealership.

17 Q. And that relationship, you have with CDK?

18 A. Yes, ma'am.

19 Q. And --

20 A. And I might add that it is unwritten, informal.
21 And I wouldn't go so far as to characterize it as a
22 relationship. What it is -- it is a practice. And
23 it -- it has no specified duration. It's something
24 that, you know, either one of us could, you know, quit
25 tomorrow.

1 Q. So you would not call it an informal
2 relationship?

3 A. No, ma'am. I would call it a practice.

4 Q. Is the inform- -- the practice reciprocal?

5 MS. GULLEY: Objection; form.

6 A. Yes, ma'am.

7 Q. (By Ms. Wedgworth) Who for CDK -- who for
8 Reynolds implements this reciprocal practice?

9 MS. GULLEY: Form.

10 Q. (By Ms. Wedgworth) Between CDK and Reynolds?

11 MS. GULLEY: Form.

12 A. I honestly don't know which department actually
13 handles it. It's my belief that it gets done but, you
14 know, exactly where in the organization it occurs, I --
15 I can't tell you.

16 Q. (By Ms. Wedgworth) Would it be under
17 Mr. Schaefer's role? His team?

18 A. It could be. But for some reason, I think
19 that -- that that's not where it happens. I think it --
20 it's more likely to happen over in part of the
21 operations department of the organization.

22 Q. Do you have a similar reciprocal relationship
23 with any other DMS providers?

24 A. Do not.

25 Q. So the only reciprocal relationship you have

1 regarding this DMS agreement is with CDK?

2 MS. GULLEY: Objection; form.

3 A. That -- that's correct.

4 Q. (By Ms. Wedgworth) I'd like to show you what's
5 been previously marked as Exhibit 504. I don't think we
6 have to mark it again.

7 MS. GULLEY: You don't.

8 Q. (By Ms. Wedgworth) Previously marked Exhibit
9 504, Mr. Brockman. Document Bates-stamped
10 REYMDL00263055. Have you had time to review the
11 document, Mr. Brockman?

12 A. I've never seen this before. Could you give me
13 just a moment more?

14 Q. Yes.

15 A. Yes.

16 Q. Is this an email you received and responded to
17 on or around May 30, 2017?

18 A. Yes, ma'am, it appears to be that.

19 Q. And was it your intent to be truthful and
20 accurate in writing the email?

21 MR. RYAN: Objection.

22 A. Yes, ma'am.

23 Q. (By Ms. Wedgworth) And here you're responding
24 to a question from Mr. Strawsburg; correct?

25 A. That's correct.

1 Q. And in the email you write, "Other than our
2 informal relationship with CDK, we provide no assistance
3 to any third party." Do you see that?

4 A. Yes.

5 Q. Is this the informal relationship with CDK you
6 just testified about?

7 A. Yes, ma'am.

8 Q. So in -- in the response to Mr. Strawsburg, you
9 referred to it as an informal relationship?

10 A. Yes, ma'am, in that case, I did.

11 Q. And did this informal relationship with CDK
12 allow CDK to access Reynolds software in May 2017?

13 MS. GULLEY: Objection; form.

14 A. The answer to that is "not correct."

15 Q. (By Ms. Wedgworth) Did this informal
16 relationship with CDK allow CDK to -- to work with
17 Reynolds regarding the -- both DMS systems?

18 MS. GULLEY: Objection; form.

19 A. There -- we need to talk some more about, you
20 know, what, you know, the informal relationship -- or
21 this involves. We receive notification, typically
22 from the customer, that they're -- that they're
23 converting to CDK. And our first question is -- is:
24 "Well, have you decided when?" And with that
25 information, we also ask them to -- to notify CDK --

1 actually, CDK is notifying them as to when their
2 conversion is going to take place.

3 And there's a scheduling process that takes
4 place where -- when the conversion data is going to be
5 outputted on to a tape, and that tape is -- can then --
6 then be given, you know, to CDK. They don't actually
7 access our systems at all.

8 There -- there's an inter- -- intermediate
9 step in there where the accounts receivable position
10 of -- of the customer is verified by our accounting
11 department. And it's not just, you know, what
12 they might be currently due, but also what's going to be
13 due by the time the conversion occurs. And so
14 there's -- there then -- there's then a dollar amount
15 which represents the total remaining obligation of the
16 customer, and that's from a financial standpoint. And
17 before the tape is actually cut, we get a check for
18 their remaining financial obligation.

19 Q. (By Ms. Wedgworth) And then CDK and Reynolds
20 have a conversation; is that correct?

21 A. No. There -- there's been a conversation prior
22 to that, but it will be a -- a subsequent conversation.
23 It -- it's a multistep, and I -- I'm not in a position,
24 from a knowledge standpoint, to describe that with
25 perfect accuracy. But generally, that's what happens.

1 Q. And Reynolds does not have that relationship
2 with any other DMS provider; is that correct?

3 MS. GULLEY: Objection; form.

4 A. That's correct. What the other -- other
5 providers have to do is -- and that's they have to ask
6 the customer to, you know, run reports of things like
7 parts inventory and vehicle inventory and general ledger
8 balances, for the -- for the customer to copy those
9 reports out to a -- a thumb drive or a small hard disk
10 and -- and give that to the vendor that they're going
11 to, that they're converting to. And then those reports
12 are run through data conversion programs to accomplish
13 the same thing.

14 MS. WEDGWORTH: Move to strike everything
15 after "That's correct."

16 Q. (By Ms. Wedgworth) You can set that document
17 aside, Mr. Brockman. Mr. Brockman, I'll show you what's
18 been marked as Plaintiff's Exhibit 660.

19 (Exhibit 660 was marked for
20 identification.)

21 Q. (By Ms. Wedgworth) I believe yesterday you
22 testified this type of document is a management report
23 concerning finances at Reynolds; is that correct?

24 A. That -- that's correct.

25 Q. And do you receive these reports on a monthly

1 basis?

2 A. Yes, ma'am.

3 Q. And the purpose of this report is for Reynolds
4 to understand the financial analysis going on, overall,
5 at the company; is that correct?

6 A. That's correct. It's prepared for senior level
7 vice-presidents. And it -- it's not financial
8 statements, but it's financial information. And to say
9 that it's used to run the company is probably a
10 mischaracterization.

11 I get this report once a month. I probably
12 spend 30 minutes on it. And the reason why I only spend
13 30 minutes on it is because it's historical information.
14 It is -- has been -- very little bearing as what I
15 should be doing on a day-to-day. Reynolds is the type
16 of company where what happened five years ago has way
17 more impact on what we see in here than what happened --
18 than what's happened in the last month.

19 Q. And these reports show that -- whether or not
20 Reynolds is -- what their sales are; is that correct?

21 MS. GULLEY: Form.

22 A. Yes. That -- that is one of the sta- --
23 statistics that it provides. But, again, from an
24 important standpoint, as far as running the company,
25 this report is very little used by me. I'm much more

1 interested in who we've hired, the customers we've sold,
2 what projects we're accomplishing as far as new product
3 development. Those are all way more -- way more
4 important for the success of the organization.

5 Q. (By Ms. Wedgworth) Well, these are prepared by
6 Reynolds at least on a monthly basis; correct?

7 A. That's correct.

8 Q. And they are sent to you at least on a monthly
9 basis?

10 A. That's correct.

11 Q. And it's -- there is a team at Reynolds who
12 prepares these financials; is that correct?

13 A. That's correct.

14 Q. If we go to Page 12 of this document, which has
15 a Bates ending 712. And this document, at the top, is
16 "NA DMS Product Solution Data Services P&L." Do you see
17 that at the top?

18 A. Yes, ma'am.

19 Q. Under the "One Time Revenue" for RCI, you'll
20 see that there's a variance of 354 percent here. Do you
21 see that?

22 A. I'm sorry that I'm not quite -- could you --

23 Q. So it would be the third line of numbers down.

24 A. Okay. Yes. Okay. I see the third line of
25 numbers down.

1 Q. Where it looks like in January of 2015 there
2 were 150 RCI customers. And then for 2016, there's 681
3 customers. Do you see that? Or sales?

4 MS. GULLEY: Objection; form.

5 A. I'm seeing that. I'm not sure that it says
6 that's customers.

7 Q. (By Ms. Wedgworth) Or sales -- of 150 sales
8 versus 681 in 2016?

9 MS. GULLEY: Objection; form.

10 A. What my issue is -- and that's -- it's just I'm
11 not really familiar with this report. I don't know
12 whether that means -- whether that's a sales number or
13 whether that's a customer number.

14 Q. (By Ms. Wedgworth) In either event, it's
15 increased 354 percent; you would agree?

16 MS. GULLEY: Objection; form.

17 A. Whatever it is, it's got "354%" beside it.

18 Q. So the heading on the left-hand side says, "One
19 Time Revenue." Do you see the heading?

20 MS. GULLEY: Objection; form.

21 A. Yes, I see that.

22 Q. (By Ms. Wedgworth) And so for RCI, for January
23 2016, it's 681 versus 150 in the month a year earlier.

24 MS. GULLEY: Form.

25 A. Yes, that's what it looks like. You're

1 obviously more familiar with this report than I am.

2 Q. (By Ms. Wedgworth) Well --

3 MS. GULLEY: Move to strike. It's a joke.
4 I'm sorry.

5 Q. (By Ms. Wedgworth) Going -- going down to the
6 recurring revenue, for the RCI number, it's -- appears
7 to be \$5,910,000 for 2016, whereas the previous year,
8 for 2015, was \$3,104,000. Do you see that?

9 MS. GULLEY: Form.

10 A. I wonder if somebody has a straightedge. I'm
11 77 years old, and my vision is not as good as it used to
12 be.

13 MS. WEDGWORTH: Well, even at my age, which
14 I won't put it on the record -- I highlighted. To keep
15 my -- I'm mean, that's how I read it. But -- but you
16 didn't have the highlight. So I -- what I'm saying is,
17 I need aid, too.

18 MS. GULLEY: Which line are we, I'm sorry.

19 MS. WEDGWORTH: So RCI, "Recurring
20 Revenue."

21 MS. GULLEY: Got it.

22 Q. (By Ms. Wedgworth) Of \$5,910,000 versus
23 \$3,104,000 the previous year. Do you see that?

24 A. Thanks to the straightedge, yes, I do.

25 Q. And that's an increase of 90 percent? Do you

1 see that?

2 A. Yes, I see that.

3 Q. Okay. So is it fair to say that, after the
4 February 2015 agreements, that revenue for RCI jumped
5 dramatically?

6 MS. GULLEY: Objection; form.

7 A. Well, when you referred to agreements, I'm --
8 I'm -- can you describe which agreement that you're
9 talking about?

10 Q. (By Ms. Wedgworth) Well, the data exchange
11 agreements and the other two agreements in February of
12 2015. We looked at the exhibit yesterday that you
13 signed.

14 A. Okay. The --

15 MS. GULLEY: Objection; form.

16 A. -- this -- this is the stand-down agreement,
17 you know, with CDK.

18 Q. (By Ms. Wedgworth) Okay. So after the
19 stand-down agreement, is it fair to say that RCI
20 revenues jumped?

21 MS. GULLEY: Objection; form.

22 MR. RYAN: Objection.

23 A. Again, I -- I would not think that a percentage
24 basis -- that they jumped that much. So I would be
25 surprised if there's not some other, you know,

1 customers, you know, third parties that -- that have
2 come under RCI contracts. I don't think it's just those
3 ones that came to us as a result of the stand-down
4 agreement. Again, looking at this, I can't tell.

5 Q. (By Ms. Wedgworth) Has RCI been profitable in
6 2016?

7 MS. GULLEY: Objection; form.

8 A. We -- we don't have profit numbers on RCI. And
9 I need to explain some about -- we don't have any
10 internal cost accounting.

11 Q. (By Ms. Wedgworth) So you don't know if RCI is
12 profitable?

13 MS. GULLEY: Wait a minute. He's going to
14 finish his answer.

15 A. What I'm saying is -- and that's that if RCI is
16 profitable, I have no way of knowing, you know, if it is
17 or how much. The reason why is because we don't have
18 internal cost accounting. And organizationally -- and I
19 realize for somebody that's used to dealing with larger
20 corporations, you know, that sounds kind of crazy.

21 But you have to remember that I came from a
22 very small organization, and I'm very sensitive to, you
23 know, the use -- efficient use of personnel, of
24 overhead. And the cost accounting imposes an
25 overhead -- much like in a law firm, you know, you have

1 to keep time accounting records, you know, billing
2 records and that sort of thing. That takes probably 5
3 or 6 percent. Well, if we were to have cost accounting,
4 it would do the same thing to us. And I, frankly, would
5 rather have the productivity, you know, than the
6 information.

7 And that's the reason why that -- I -- I
8 don't have a number as far as profitability for RCI.
9 It's part of the overall, you know, organizational
10 numbers, because you don't have, you know, one
11 piece that operates as a whole entity. We keep track of
12 sales numbers but not profit numbers, because we don't
13 have any profit numbers.

14 Q. (By Ms. Wedgworth) I'd like to show you what
15 was marked yesterday as Plaintiff's Exhibit 651, on Page
16 17. And yesterday, I think we looked at the footnote on
17 Page 17 that says, "We are expecting an annual revenue
18 of approximately \$30 million from" -- "generated from
19 the CDK Deal." Do you see that?

20 A. Yes, ma'am.

21 Q. Is that a number that you asked to be tracked?

22 A. I did not.

23 Q. Were you interested in the annual revenue
24 concerning the CDK deal?

25 A. Revenue-wise, yes.

1 Q. And when you say "CDK Deal," what do you refer
2 to?

3 A. That is the -- the stand-down agreement where
4 they agreed to cease and desist hacking our systems.

5 Q. So due to the CDK deal, Reynolds expects annual
6 revenue of approximately \$30 million; is that correct?

7 MS. GULLEY: Objection; form.

8 A. That's what this says --

9 Q. Is there any reason to --

10 MS. GULLEY: Let him finish his answer.

11 A. That -- that is not -- not my expectation,
12 though, this is something our chief financial officer,
13 you know, decided he would throw in. But it's -- again,
14 it's not a number that I would routinely track.

15 Q. (By Ms. Wedgworth) Was that a number you were
16 interested in?

17 A. Yes, ma'am.

18 Q. Is that a number that you -- you asked your CFO
19 and/or Mr. Schaefer to analyze and come up with?

20 A. No --

21 MS. GULLEY: Objection; form.

22 A. -- I did not. I thought -- I just said that
23 I -- I didn't ask, for instance, for this footnote to be
24 inserted.

25 (Exhibit 661 was marked for

1 identification.)

2 Q. (By Ms. Wedgworth) I'd like to show you what's
3 been marked as Plaintiff's Exhibit 661, a one-paged
4 document, Bates-stamped REYMDL00045556.

5 Mr. Brockman, have you had time to review
6 the document?

7 A. Yes, ma'am.

8 Q. Have you seen it before?

9 A. Yes, ma'am.

10 Q. Did you write this email to Mr. Schaefer on or
11 about January 5th, 2016?

12 A. Yes, I did.

13 Q. The subject line, when you write the email, is
14 blank. And then you write, "Bob, From a policy
15 standpoint, the term 'profitability' (and any of its
16 variants) in relation to RCI are never to be uttered in
17 front of anyone inside or outside the company. Your
18 people need to understand this as well. Bob."

19 Is that an accurate statement of what you
20 wrote to Mr. Schaefer and Mr. Lamb?

21 A. Yes, ma'am. And the reason why that I -- I
22 wrote it is because we don't track profitability,
23 because we don't have cost accounting. Without cost
24 accounting, it's impossible to accurately track
25 profitability.

1 Secondly, you know, from a policy
2 standpoint, Reynolds is run very, very much like a small
3 company where, you know, the CEO, which is me, and a
4 handful of other people actually understand how
5 profitable the company is. We keep that information
6 very closely held. It's nobody's business.

7 It -- which is completely different than
8 the way Reynolds used to be operated. Of course, as a
9 public company, everybody had access to the -- to the
10 financials, because they were -- they were publicly --
11 published.

12 I believe that, from an operating
13 standpoint, that that is very deleterious to the
14 successful operation of the business. And the reason
15 why I feel that way is because everything we do, you
16 know, is involved in long-term success. For example,
17 a -- a software package, you know, may take five years
18 to develop, get into the marketplace and have -- become
19 accepted in the marketplace. You know, that -- that's a
20 direct expense to profit. You know, if you don't
21 understand, you know, how the company operates, you're
22 liable to think that things aren't doing well. Well,
23 the reality is, we're developing a lot of software,
24 which costs a lot.

25 So I think that, you know, having profit

1 numbers being thrown around the company -- and
2 particularly in this case, where we don't have any cost
3 accounting to support what profit might be, is -- is
4 dangerous for morale, for the whole organization. I
5 have followed that policy religiously. And as a result,
6 you know, Reynolds is a -- a -- a very profitable
7 company.

8 Q. Is there any reason you limited this email
9 concerning your prohibition on discussing profitability
10 to RCI?

11 A. That -- that's where I saw the most recent
12 violation.

13 Q. What violation did you see?

14 A. I saw someone in Bob Schaefer's organization
15 mumbling about profitability when they're in no position
16 to do so because -- since we have no cost accounting,
17 they don't know how profitable it is -- or unprofitable,
18 for that matter.

19 Q. Who was the person commenting on profitability
20 concerning RCI in Mr. Schaefer's organization?

21 A. I'm sorry. I don't remember the name of the
22 person.

23 Q. And what was the comment?

24 A. The comment was something in regard to RCI
25 being, you know, very, very profitable. Well, there's

1 no way to know, in the first place. And secondly, the
2 discussion of profits openly at that level is -- you
3 know, we don't do that.

4 Q. But you're certainly interested in RCI revenue;
5 correct?

6 MS. GULLEY: Objection; form.

7 A. Yes, ma'am. And the reason why I'm interested
8 in RCI revenue, particularly in regards to the CDK
9 stand-down agreement, is because CDK's attitude and, you
10 know, talk and discussion in the marketplace regarding
11 data security, and specifically our data security
12 procedures, has been very hurtful over the years. And
13 I'm looking forward to, you know, recovering from some
14 of the hurt that we endured over a number of years.

15 Q. (By Ms. Wedgworth) So you specifically do want
16 to track revenue at RCI as it relates to the stand-down
17 agreement with CDK?

18 MS. GULLEY: Objection; form.

19 A. Yes, ma'am. I made inquiries about that.
20 Since that's over with now, it's of less importance, you
21 know, currently. I -- I really don't follow it that
22 much anymore. But during this time period, I was.

23 Q. (By Ms. Wedgworth) Well, Reynolds currently
24 follows that; correct?

25 MS. GULLEY: Objection; form.

1 Q. (By Ms. Wedgworth) In the financial
2 statements?

3 MS. GULLEY: Form.

4 A. They do not follow any financial statements,
5 you know, incomes, to that level of detail. You know,
6 there is a -- a gross, you know, revenue number that
7 goes in the audits -- goes in -- which is where the
8 financial statements are.

9 Q. (By Ms. Wedgworth) You said the comment that
10 someone made in Mr. Schaefer's organization was that RCI
11 is very, very profitable; is that correct?

12 MS. GULLEY: Objection; form.

13 A. That -- that's what gave rise to this
14 particular email.

15 Q. (By Ms. Wedgworth) And you don't recall who
16 that person is?

17 MS. GULLEY: Objection; form.

18 A. No, ma'am.

19 Q. (By Ms. Wedgworth) I'd like to show you what's
20 been marked as Plaintiff's Exhibit 662.

21 (Exhibit 662 was marked for
22 identification.)

23 MS. WEDGWORTH: Can I have one back?

24 Q. (By Ms. Wedgworth) Mr. Brockman, as you read,
25 I'm going to let you know that I'm going to reference

1 questions to the second page of the document where --
2 where you write in it.

3 Mr. Brockman, have you had a chance to
4 review the document?

5 A. I'm almost there. Yes, ma'am.

6 Q. And on the second page, where you wrote an
7 email in response to Mr. Schaefer and Mr. Schaefer wrote
8 you back, did you write this email in ordinary course of
9 your business around August 9th, 2016?

10 A. Okay. Is this -- can you point out
11 specifically --

12 Q. Your email, kind of in the middle of the page.

13 A. Okay. It's the one in bold print?

14 Q. Yes.

15 A. Okay.

16 Q. And you wrote it to Mr. Schaefer on about
17 August 9, 2016?

18 A. Yes, ma'am. That's -- that's what the email
19 says. I don't remember specifically but, you know,
20 that's what it says.

21 Q. And the email says, "I am still needing an
22 answer as to where we stand on the amount of revenue
23 that we were supposed to realize out of the CDK deal."
24 Do you see that?

25 A. Yes.

1 Q. And the CDK deal you're referring to there is
2 what you call the "stand-down agreement"?

3 A. That's correct.

4 Q. And you're asking Mr. Schaefer, here, to answer
5 a question you -- you're waiting on concerning the
6 revenue realized from that stand-down deal; is that
7 correct?

8 MS. GULLEY: Objection; form.

9 A. That's correct. And as I pointed out
10 previously, the reason why I'm interested in that is
11 because I believe that we suffered greatly from ADP's
12 actions over the years. And one of -- one of the
13 reasons why I'm concerned about this revenue is because
14 this is a recompense for the things that they did to us.
15 And I'm -- I'm curious as to this coming out at -- as
16 the way that it was planned to come out.

17 Q. (By Ms. Wedgworth) Meaning it was planned to
18 come out to -- to generate revenue?

19 MS. GULLEY: Objection; form.

20 A. That's -- that's correct. That was one of
21 our -- our motivations for, you know, the whole
22 stand-down agreement in the first place. It was to
23 stop, you know, ADP from hacking in, banditing our
24 systems and to, you know, recompense us for the damage
25 they've done to us over the years on the subject of data

1 security.

2 MS. GULLEY: Thank you. Robert emailed me
3 and said he was disconnected. Just letting you know.

4 MS. WEDGWORTH: Can we go off the record?

5 THE VIDEOGRAPHER: This is the end of Media
6 1. The time is 11:02 a.m., and we are off the record.

7 (Short recess 11:02 to 11:09 a.m.)

8 THE VIDEOGRAPHER: This is the beginning of
9 Media 2. The time is 11:09 a.m. We're back on the
10 record.

11 EXAMINATION (Continuing)

12 (Exhibit 663 was marked for
13 identification.)

14 BY MS. WEDGWORTH:

15 Q. Mr. Brockman, I'll show you what's been marked
16 as Plaintiff's Exhibit 663. Have you had an opportunity
17 to review it?

18 A. I'm almost done. Yes.

19 Q. Are there any awards at Reynolds that are given
20 to reward high-performing teams?

21 A. Yes, there are.

22 Q. What are those awards?

23 A. The rewards are numerically, you know,
24 principally, individual awards.

25 Q. I asked just for teams, team awards.

1 A. Teams? There's really only one team award
2 that's been in place for quite a while, which is a
3 department of the year. And we give that out twice. We
4 give it once in Dayton and we give it once in Houston.

5 Q. Dayton is toward the end of the year?

6 A. No, they're both -- one of them is on a
7 Wednesday in November and on a Friday, the following
8 Friday.

9 Q. And is there any monetary compensation for the
10 team with -- that goes with that award?

11 A. No.

12 Q. Is there any trip or -- or benefit to that
13 award for the team?

14 A. There -- there's no direct prize or -- you
15 know, as there are with some of our awards, individual
16 awards. This particular award, there's no prize.
17 There's a plaque. You know, there's no trip. However,
18 people that are in that department, especially our key
19 people in that department are -- in due course, and --
20 and because it's the right thing to do, they will
21 inevitably, you know, receive better salary increases
22 than -- than they otherwise might. It's a very
23 prestigious award to get, the department of the year.

24 Q. In Plaintiff's Exhibit 663, is this an email
25 you received from Mr. Schaefer around November 10, 2016

1 where he writes to you to make a pitch that his team win
2 that 2016 team -- team award.

3 A. Yes. That's what it is.

4 Q. And did you receive this email?

5 A. Yes, ma'am.

6 Q. The second paragraph of this email that
7 Mr. Schaefer writes to you says, "This organiza-" --
8 well, the first paragraph says, "Several years ago
9 (about 9) you met with the Data Services team" -- which
10 is also known as DSV; correct?

11 A. That's correct.

12 Q. -- "you met with the Data Services team and we
13 discussed our role with[in] the company. At this [the]
14 time, we were just starting the security enhancements,
15 RCI was just in it's infancy in the new company. We
16 discussed our role and at the time you quoted the
17 following to the team:

18 " 'This organization is like the CIA, I
19 (meaning you) understand what this organization is and
20 will be doing but we cannot communicate to the rest of
21 organization what specifically is being done, how it is
22 being done and any the successes that are accomplished.
23 You will receive[d] medals behind the scenes. Someday,
24 we will be able to communicate and celebrate your
25 successes. I can assure you of that! ' "

1 Did you say that?

2 A. Yes, I did.

3 Q. You can put that document aside. Did
4 Mr. Schaefer's team win the 2016 team award?

5 A. I honestly can't remember. I don't -- I don't
6 think they did.

7 Q. Has Mr. Schaefer's DSV team ever won the award?

8 A. I don't remember clearly yes or no, but -- I --
9 my belief would be, no.

10 Q. Mr. Schaefer would know for sure, I presume?

11 A. I know for sure he would. And I might add, I
12 get a number of letters like this from all corners of
13 the company.

14 MS. WEDGWORTH: Why don't we take a break
15 now. Can we take a 10-minute break?

16 MS. GULLEY: That's fine.

17 THE VIDEOGRAPHER: The time is 11:15 a.m.,
18 and we're off the record.

19 (Short recess 11:15 to 11:31 a.m.)

20 THE VIDEOGRAPHER: Back on the record at
21 11:31 a.m.

22 EXAMINATION (Continuing)

23 (Exhibit 664 was marked for
24 identification.)

25 BY MS. WEDGWORTH:

1 Q. Mr. Brockman, I'll show you what's been marked
2 as Plaintiff's Exhibit 664.

3 A. May I tell you the news first?

4 Q. Yes. Well, off the record, then.

5 MS. GULLEY: Let's just stay on the record.
6 We'll do this in a little bit. Let's proceed with --

7 MS. WEDGWORTH: Sadly, we're on the record.
8 So if you will take a look at the exhibit.

9 (Brief discussion.)

10 A. 664 is the one we're supposed to be looking at
11 it?

12 Q. (By Ms. Wedgworth) Yes.

13 MS. GULLEY: Thank you.

14 Q. (By Ms. Wedgworth) A document Bates-stamped
15 REYMDL00333091 through 092. And Mr. Brockman, as you
16 review the document, I'll let you know my questions
17 relate to the second page of the document.

18 Mr. Brockman, have you had a chance to
19 review --

20 A. Yes, ma'am.

21 Q. -- Exhibit 664? Did you receive and write this
22 email on or about April 19, 2016?

23 A. Yes, that -- I believe that's what it says.

24 Q. And if we start on the second page of the email
25 where Mr. Bauer writes to you and some others. The

1 subject is: "Draft ASB: New Features for MMS Data
2 Synchronization (Sync) - Review Due by April 26." Do
3 you recognize this email?

4 A. Yes, ma'am. But I -- I -- I'm sitting here
5 searching my mind, and I -- I don't recall, frankly,
6 what I was talking about. It was talking about
7 something having to do with Data Sync, but what it's
8 talking about, I don't remember.

9 Q. Well, Mr. Bauer writes to you and others,
10 "Please review the attached draft ASB announcing New
11 Features for MMS Data Synchronization (Sync). Forward
12 any edits/comments to my attention."

13 And then you respond, "Tom, This is
14 absolutely not to be released. I have no idea why it
15 was ever built. The policy all along has been to not
16 make further enhancements to MMS that make the dealer's
17 DMS data more valuable - so it is easier to leave us and
18 not feel the pain. Notify all of those concerned.
19 Bob."

20 Did you write that?

21 A. Yes, ma'am, I did. But the point I'm trying to
22 make is -- is whatever the feature was, I can't tell
23 you. I don't remember.

24 Q. Is it fair to say that you did not approve of
25 further MMS enhancements to the dealer's DMS data?

1 MS. GULLEY: Objection; form.

2 A. What -- that's correct. What -- what's
3 happening here is --

4 Q. (By Ms. Wedgworth) Actually, there's no
5 question pending.

6 Is it fair to say that the policy at
7 Reynolds was to not make further enhancements to the MMS
8 to make the dealer's data more valuable?

9 MS. GULLEY: Objection; form.

10 A. That's what I'm -- I'm endeavoring to explain.

11 Q. (By Ms. Wedgworth) And I just asked a
12 yes-or-no question.

13 MS. GULLEY: You can answer the question.

14 MR. RYAN: I object to cutting the witness
15 off.

16 MS. GULLEY: Go ahead and answer.

17 A. Well, okay. There -- there's two databases.
18 There's -- there's the DMS database, which every
19 dealership has. MMS is -- is a marketing database,
20 which we sell under the Naked Lime Marketing MS tag, and
21 these databases are -- are different in -- in the amount
22 of data that they contain.

23 As we, you know, make investments
24 to improve the product offering for Naked Lime
25 Marketing, which is the MMS database, we want to do that

1 so that product will sell more. That's -- that's what
2 our investment is -- is, you know, based upon.

3 What's happened here appears -- and that's
4 we have done something that's an enhancement to MMS.
5 And for some reason, you know, we have, in the
6 synchronization process, you know, made that -- made
7 that information, which we're buying and building on our
8 own, we're moving that over to the dealership's DMS.
9 And we don't intend to do that. So what's happened
10 is -- is the development is going to stray from what is
11 logical from a business standpoint.

12 Q. (By Ms. Wedgworth) You -- so the developer --
13 did you say "developer" or "development"?

14 A. Somebody in the development area.

15 Q. And this is your email reining that
16 development -- or developer back in?

17 MS. GULLEY: Form.

18 A. That's correct. It says, "This is absolutely
19 not to be released."

20 Q. (By Ms. Wedgworth) Mr. Brockman, I'd like to
21 show you what's been marked as Plaintiff's Exhibit 665.

22 (Exhibit 665 was marked for
23 identification.)

24 Q. (By Ms. Wedgworth) Have you had a chance to
25 review Plaintiff's Exhibit 665?

1 A. I'm just about there. Yes, ma'am.

2 Q. Did you write this email on or -- and its
3 attachment on or about May 8, 2016?

4 A. I -- I'm sorry. I'm not seeing where -- where
5 I -- I wrote it. Unless it's this little short email
6 down at the bottom of Page 1 that you're talking about.

7 Q. Yes. Yes.

8 A. Yes, I understand and I -- I did write that.

9 Q. Page 2 of the document, did you write this as
10 well, dated May 9, 2019, entitled "Security
11 Improvements"?

12 A. I don't think I actually wrote that. I think
13 that it was written by somebody else, and I attached it
14 on to my email.

15 Q. And in your email that has no subject, you
16 write, "This is what needs to be done"; is that correct?

17 A. That's correct.

18 Q. And in the attachment, which is entitled
19 "Security Improvements," are these security improvements
20 that you wanted Reynolds to implement in the May 2016
21 time frame?

22 A. Yes, ma'am. Specifically, what -- what's
23 involved here is -- and that's that we're endeavoring,
24 as part of our research, to figure out what third-party
25 hackers, bandits, look like. And one of the things they

1 look like is -- and that's they come in in the middle of
2 the night. And we're -- we're very suspicious about
3 people coming in in the middle of the night. That's
4 just doesn't look like ordinary business use of the
5 software. It looks like something foreign.

6 And what they're saying is -- and that's
7 that we want them to enter CAPTCHA individually, which
8 has been a -- a pretty successful way to turn back, you
9 know, interlopers. They even have gone so far -- and
10 this is hard to believe -- they'll have the software --
11 their software, when they come across CAPTCHA, which
12 they can't fix with their software -- they can't detect.

13 You know, when you look at a CAPTCHA, a
14 series of pictures. You know, humans can pick them out
15 pretty well, so what they'll do is -- and that's they'll
16 send a quickie message to some place in India. And some
17 place in India, somebody is staying up all night or all
18 day and, you know, they'll look at the CAPTCHA on their
19 screen and they can answer it. And then they -- they
20 send that back to -- where all of this is occurring in
21 the U.S. And they get in. I mean, it's -- it's --
22 they've gone to that extreme to try and dig their way
23 in.

24 Q. So in these security improvements that
25 you've -- want Reynolds to implement, one of those

1 security improvements is CAPTCHA would have to be
2 entered individually for each report to be exported;
3 correct?

4 A. That's correct.

5 Q. And the other security improvement would be
6 that no exports could be done from 7 p.m. Saturday until
7 8 a.m. Monday; correct?

8 A. Correct. And it says, you know, "Bulk export
9 functionality has been removed for data security
10 reasons." That's the error message.

11 Q. And the additional time limit, also, was that
12 no exports could be done, of any kind, from 7 p.m. to 8
13 a.m.; correct?

14 A. That's correct.

15 Q. And Reynolds implemented these security
16 improvements at the end of May; correct?

17 A. I'm not sure, you know, what got done when.
18 I'm not -- I'm not in the loop at that part.

19 Q. Is it fair to say, when these security
20 improvements were implemented, your main concern was
21 security?

22 A. Absolutely.

23 (Exhibit 666 was marked for
24 identification.)

25 Q. (By Ms. Wedgworth) I'd like to show you what's

1 been marked as Plaintiff's Exhibit 666.

2 Mr. Brockman, have you had a chance to
3 review Plaintiff's Exhibit 666?

4 A. Yes.

5 Q. And is this an email you received and wrote in
6 May 31, 2016?

7 A. Yes.

8 Q. And this email concerns security enhancements;
9 correct?

10 A. What it concerns is -- and that's that, as I've
11 testified, you know, previously -- yesterday, that the
12 detection of the techniques that, you know, bandits use
13 to get in our system is not a perfect process. In other
14 words, we can't look at what they're doing and say,
15 "Okay, that's a bad guy and, you know, what's happening
16 is wrong."

17 We -- in the course of continuing to
18 improve our -- our security controls, we make them a
19 little too tight, and it's because there's things
20 happening that we don't -- we had not anticipated. For
21 instance, here it talks about the fact that, you know,
22 people come in early to run reports. And I never
23 perceived that that would actually be happening.

24 Q. You never understood that?

25 A. No. I did not understand in the -- in the

1 dealership world, that people would come in at 5 a.m. in
2 the morning and run reports. I just didn't perceive
3 that. And sure enough, that was a little too tight.
4 And so what we're doing here is -- and that's where
5 we're -- we're issuing, you know, temporary rollbacks
6 for specific dealers of -- of that particular security
7 change until such time as we can, you know, make it an
8 overall change to -- to the -- to the security process.

9 Q. And you gave temporary exemptions to all of
10 these major accounts listed in Exhibit 666 with regard
11 to your security improvements; correct?

12 MS. GULLEY: Objection; form.

13 A. These are -- these are the people that -- you
14 know, that call our support center and -- and register,
15 you know, what we consider to be a valid complaint. And
16 therefore, these people, we issued a -- a temporary
17 bypass to this particular security change.

18 Q. (By Ms. Wedgworth) And the groups listed here
19 are major accounts; is that a fair statement?

20 A. I've not looked at each specific one.

21 Q. Well, you don't have any reason to believe that
22 Mr. Bates is inaccurate when he says, "Terry and Willie,
23 Below is a list of Major Accounts who have expressed
24 frustration and disappointment with the changes that
25 have occurred." Do you see that?

1 A. Yeah. Mr. Bates is a -- a -- a credible
2 person.

3 Q. So it's fair to say this list below is of major
4 accounts at Reynolds?

5 A. Yeah, based on Dave Bates' opinion, yeah, I
6 would agree. His opinion would be a good opinion.

7 Q. And so the major accounts at Reynolds were
8 given exemptions for the new security enhancements; is
9 that correct?

10 MR. RYAN: Object to form.

11 A. No. Just these specific ones.

12 Q. (By Ms. Wedgworth) The major accounts listed
13 in Exhibit 666 --

14 A. Yes.

15 MS. GULLEY: Objection.

16 Q. (By Ms. Wedgworth) -- are the ones who received
17 exemptions to the security enhancements?

18 MS. GULLEY: Objection; form.

19 A. Just the people on this list.

20 Q. (By Ms. Wedgworth) Do you recall, when the
21 security enhancement was put into place, it was done
22 over the weekend?

23 MS. GULLEY: Objection; form.

24 A. I'm sorry. I -- I don't recall and I -- I
25 would not know.

1 Q. (By Ms. Wedgworth) Do -- do you recall that
2 dealers were not informed of these security enhancements
3 in advance?

4 MS. GULLEY: Objection; form.

5 A. I would say it's our general policy not to
6 announce security enhancements in advance.

7 Q. (By Ms. Wedgworth) With regard to these
8 security enhancements that were put in place at the end
9 of May 2016, they were ultimately withdrawn, weren't
10 they?

11 MS. GULLEY: Form.

12 A. I'm not in a position to be able to say. I --
13 I don't know.

14 Q. (By Ms. Wedgworth) Do you recall during this
15 time period that Reynolds received a lot of complaints
16 from dealerships concerning the -- the security
17 enhancements that Reynolds released at this time?

18 A. Ma'am, I'm not aware of -- you know, of what
19 went on in that period of time, other than if I would be
20 notified, such as this email right here.

21 Q. You would be notified?

22 A. I would only be notified of situations like
23 this one here.

24 Q. Would Mr. Schaefer be notified on a -- on a
25 normal basis concerning this?

1 A. Yeah, he would be more likely to than I.

2 (Exhibit 667 was marked for

3 identification.)

4 Q. (By Ms. Wedgworth) Mr. Schaefer, I'll show you
5 what's been marked as Plaintiff's Exhibit 667.

6 A. You mean me?

7 Q. Mr. Brockman.

8 A. Okay.

9 Q. I'm trying to see if I can outdo Mr. Nemelka.

10 Mr. Brockman, have you reviewed Plaintiff's
11 Exhibit 667?

12 A. Not quite. It's five pages.

13 Q. The good news is the last two are screenshots,
14 I think.

15 A. You're right.

16 Q. Have you had a chance to review Exhibit 667?

17 A. Yes, ma'am.

18 Q. And did you receive and write this email on or
19 about May 31st, 2016?

20 MS. GULLEY: Form.

21 A. Yes, ma'am.

22 Q. (By Ms. Wedgworth) And in all your emails that
23 you wrote, do you try to be truthful and accurate?

24 A. Yes, ma'am.

25 Q. On the first page, where the subject is "Data

1 Security impact," and the earlier emails are May 31st,
2 with your email being May 31st. And then Mr. Schaefer
3 ultimately responding on June 1st, where you -- where
4 the email from Mr. Agan, before yours, says, "Bob, I'm
5 hearing from several AVPs that whatever action we took
6 recently has got a number of customers quite upset.
7 There is an email from the IT Support Director for John
8 Eagle dealerships below. Dan." Are you familiar with
9 John Eagle dealerships?

10 A. Not very much beforehand but, certainly, this
11 one here -- this dear lady -- and I'll refer to her as a
12 "dear lady" -- "I leave my house before 5am to get to
13 the store before 6am." And -- and she's coming in to be
14 there at 6 a.m., and the list of reports that she's
15 running manually is remarkable. She's clearly a very
16 dedicated person.

17 Q. Referring to your email, on the front page,
18 about her remarkable abilities, you write, "Bob, This"
19 is one -- "This one is worthy of an exception even
20 considering the CarFax 3rd party usage." Do you see
21 that?

22 A. Yes.

23 Q. Do you know what the CarFax third-party usage
24 reference is?

25 MS. GULLEY: Objection; form.

1 A. I don't know specifically what's going on
2 there, but my decision was based on what takes up most
3 of the second page. It's -- this one was clearly worthy
4 of an exception, period.

5 Q. (By Ms. Wedgworth) So you granted this
6 exception; is that correct?

7 MS. GULLEY: Form.

8 A. Yes, ma'am. And I -- the -- I don't know --
9 this happened back in 2016, two -- two and a half years
10 ago. I don't know exactly what the state of affairs is
11 regarding data security in this particular area, but I
12 do know that, you know, this has quieted down and is no
13 longer an issue. And Ms. Lisa Wood continues to be our
14 friend and good customer.

15 Q. (By Ms. Wedgworth) Well, on the "quieted down
16 and no longer an issue," let me show you what we're
17 marking as Plaintiff's Exhibit 668.

18 (Exhibit 668 was marked for
19 identification.)

20 Q. (By Ms. Wedgworth) Have you reviewed
21 Plaintiff's Exhibit 668?

22 A. Not quite through, but so far I'm really
23 enjoying it. I'm serious. Yes, ma'am.

24 Q. Did you receive and write this email on or
25 about June 2nd, 2016?

1 A. Yes, I did.

2 Q. And you write to Mr. Schaefer, "Please see
3 changes that I have made." And this attachment is
4 "DRAFT - CAPTCHA Suspension Talk Track."

5 If we go to the second page of the
6 document, "Sales Breaking News," it says, "We have
7 suspended the CAPTCHA and time restriction updates
8 released earlier this week. Read below for the
9 authorized talk track to discuss with customers."

10 Does this refresh your recollection that in
11 early June 2016, Reynolds suspended the security
12 enhancements they had put in place late May?

13 MS. GULLEY: Objection; form.

14 A. Yes. That -- that is correct. And certainly,
15 you know, the whole rest of what I wrote here is -- is
16 worth going through.

17 Q. (By Ms. Wedgworth) I just want to focus on the
18 last bullet point to get to the end of the story.
19 "Effective immediately the two enhancements regarding
20 restricted hours and CAPTCHA have been suspended." Were
21 both suspended on or around June 1, 2016?

22 MS. GULLEY: Object to the form and the
23 instruction.

24 A. I'm not aware of the exact date that that was
25 done, but I would presume sometime in that time frame.

1 Q. (By Ms. Wedgworth) And in that bullet
2 referencing two enhancements, that references the
3 security enhancements; correct?

4 A. I think it represents two of the security --
5 security enhancements and, probably, it's not likely all
6 of them because, you know, we do them in batches. We
7 don't do them individually. So there -- there's more
8 than likely others which, you know, stayed in place.

9 Q. This does not reference any, does it?

10 MS. GULLEY: Form.

11 A. No, it does not.

12 Q. (By Ms. Wedgworth) So this "Sales Breaking
13 News" talking points references two data security
14 enhancements that were being suspended; correct?

15 MS. GULLEY: Objection; form.

16 A. Yeah, but it primarily references the reasons
17 why that we do what we do and the reasons why we operate
18 the way we do.

19 (Exhibit 669 was marked for
20 identification.)

21 Q. (By Ms. Wedgworth) I'd like to show you what
22 we've marked as Plaintiff's Exhibit 669. Mr. Brockman,
23 have you had a chance to review Plaintiff's Exhibit 669?

24 A. I'm just about there. Yes.

25 Q. Did you receive and write this email on or

1 about August 12th, 2016 that is Plaintiff's Exhibit 669?

2 A. Yes, ma'am.

3 Q. I take it you are familiar with AutoAlert as a
4 third-party vendor?

5 A. In name only. I've never been to their place.
6 Never talked to them.

7 Q. Does the Reynolds contract with vendors prevent
8 the vendor from disclosing data integration fees to the
9 dealerships?

10 MS. GULLEY: Objection; form.

11 A. That -- that contract specifies that they --
12 they cannot specifically, you know, cite what our
13 monthly fee is to them, which is what appears to have
14 occurred in this particular case.

15 Q. (By Ms. Wedgworth) And you have --
16 Mr. Strawsburg writes to you about this particular case
17 of AutoAlert?

18 A. Yes.

19 MS. GULLEY: Objection; form.

20 A. And I'd like to point out as well, this is not
21 an ordinary RCI, you know, application. It was a very
22 special one where it actually, you know, requires us to,
23 you know, insert into our mainline software the
24 functionality that they're asking here.

25 Because they -- they cite "Repair orders

1 will now be in real-time, which will enable the system
2 to identify upgrade opportunities in the timeliest
3 fashion," which makes the AutoAlert product a whale of a
4 lot better. And so we're doing a lot more than just
5 providing data to them. We're actually inserting
6 functionality into our operating software that makes
7 their product better.

8 Q. (By Ms. Wedgworth) In the top email, you
9 write, "They are clearly over the line. Exercise our
10 termination for convenience." Is this you request- --
11 ordering that AutoAlert's contract be terminated?

12 A. That's correct.

13 Q. And are you ordering that their contract be
14 terminated due to the fact that they're informing
15 dealerships of their monthly data integration fee that
16 they are passing along to the dealers?

17 MS. GULLEY: Objection; form.

18 A. That's correct. That is clearly prohibited in
19 our contract. Now, they are perfectly within their
20 rights to disclose the cost of their -- of their
21 product, you know, the price that they charge the
22 dealer. You know, they are not permitted, underneath
23 our contract, to -- you know, publish the price that we
24 charge them.

25 Q. (By Ms. Wedgworth) You would agree with me

1 that the vendor market is compet- -- is a competitive
2 market; correct?

3 A. When it comes to car sales, yes, that's
4 necessarily true.

5 Q. I'd like to show you what's been marked as
6 Plaintiff's Exhibit 670.

7 (Exhibit 670 Brockman was marked for
8 identification.)

9 Q. (By Ms. Wedgworth) Mr. Brockman, have you
10 reviewed Exhibit 670 Brockman?

11 A. Yes, ma'am.

12 Q. And did you receive and write this email around
13 August 12th, 2016?

14 A. Yes, ma'am.

15 Q. And -- and if you will note the previous
16 Exhibit, 669, was on the same day as well.

17 A. That -- that's correct. And since there's
18 reference to that -- that's important -- is the reason I
19 just pulled it back out of the pile, so I can open it up
20 and look at it again.

21 Q. So at this time, meaning August 12th, 2016, did
22 AutoAlert have a "real-time service drive lead feature"?

23 A. No, they did not. They were not even
24 certified. They were not even part of RCI at that
25 point.

1 Q. Your email at the top says, "Take away the
2 RO's" -- RO's means repair orders?

3 A. Yes. That's what it means, but what -- what's
4 important is -- is the paragraph just below that, in
5 bold, where it says, "They're not even certified???"
6 Good God. And now yet in -- in their June 27th, you
7 know, notification, you know, they're -- they're
8 bragging about the fact they're now associated with --
9 we've "completed the process to become RCI certified
10 with your DMS provider, Reynolds & Reynolds. As you
11 know, the RCI certification program was designed to
12 ensure the highest level of data security for you and
13 your customers, and our certification has been a request
14 by many of our dealers."

15 But they haven't got it.

16 Q. Well, they do have -- real time has been opened
17 for them, right?

18 MS. GULLEY: Objection; form.

19 A. No.

20 Q. (By Ms. Wedgworth) Well, you -- you say, "Take
21 away the RO's opened real time," so something must be in
22 place for AutoAlert; correct?

23 MS. GULLEY: Objection; form.

24 A. What's happening is -- certainly appears, you
25 know, from -- from the documents in front of me --

1 that they are using it from a sales standpoint the fact
2 that they are certified -- RCI certified. And they're
3 not RCI certified. They haven't achieved certification
4 yet.

5 And so therefore, I'm saying that, going
6 forward, for a third-party to do this means that -- that
7 they're not really quite straightforward-kind-of folks.
8 And therefore, what we're going to do is -- and that's
9 we're not going to give them their real-time repair
10 order opening, because that is a special thing that's
11 over and above what a normal RCI -- normal RCI would be
12 just for data movement.

13 The real-time opening of repair orders
14 means that they're now into our mainline software, and
15 they're writing on our software to -- to feed to them
16 the repair order has just been opened, real time. And
17 what's happening is -- and that's that I'm -- I'm
18 directing Bob Schaefer: When somebody is -- is
19 basically being dishonest with us, there's no way we're
20 going to let them into our main software.

21 Q. (By Ms. Wedgworth) When you write, "Take away
22 the ROs opened real time from them," you've already
23 given them something; is that correct?

24 MS. GULLEY: Objection; form.

25 A. The contract which has obviously not been done

1 yet -- it it's not finished, they're not RCI certified.
2 We have decided rather than to go forward as we had
3 planned, based upon their actions, we're not.

4 Q. (By Ms. Wedgworth) Did AutoAlert become RCI
5 certified?

6 A. I'm not aware of whether they have or not.
7 I -- I would presume they did, but I don't know.

8 Q. Mr. Brockman, have any data breaches of dealer
9 DMS occurred in the past three years?

10 MS. GULLEY: Objection; form.

11 A. I believe so. There's -- there's one that I
12 recall involving DealerBuilt that was pretty
13 substantial.

14 Q. (By Ms. Wedgworth) Is that the only one you
15 recall?

16 MS. GULLEY: Objection; form.

17 A. Of size, you know, that's the only one that,
18 you know, that was a very, very good-sized one. It was
19 huge.

20 (Exhibit 671 Brockman was marked for
21 identification.)

22 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you
23 what's been marked as Plaintiff's Exhibit 671.

24 Mr. Brockman, have you had time to review Plaintiff's
25 Exhibit 671?

1 A. Not quite yet, ma'am, but very close. Yes,
2 ma'am.

3 Q. Did you receive this email on or about June
4 20th, 2017?

5 A. Yes.

6 Q. Do you recall if you approved this deal?

7 A. I don't have any direct recollection of that.
8 As I read it, it's probably likely that I did, because
9 the ShowroomMagnet actually is -- is a -- is part of the
10 company that we acquired. It's a product. And so
11 therefore, doing something for that particular product
12 area would be something that I would likely approve.

13 Q. Naked Lime -- ShowroomMagnet is part of the
14 Naked Lime entity?

15 MS. GULLEY: Objection; form.

16 A. Yes. What ShowroomMagnet is, as I recall,
17 it -- it is a marketing system which is employed to
18 motivate people that come in and get a test drive. And
19 to basically show up in the showroom and talk to a
20 salesperson and take a test drive for which they get
21 a -- a small, you know, cash payment. And it's -- it
22 has been found to be fairly decently and effective way
23 to get people to come into the dealership and take a
24 test drive.

25 Q. (By Ms. Wedgworth) And the situation described

1 at the top, "ShowroomMagnet has been utilizing a data
2 broker for the extraction of DMS transactional data for
3 clients. The purpose of this data is for market area
4 evaluations."

5 Did Reynolds, with regard to
6 ShowroomMagnet, agree to eliminate the use of a data
7 broker to access CDK DMS?

8 MS. GULLEY: Objection; form.

9 A. I -- I don't recall, you know, that specific
10 action. But I know it was our intention to, where
11 possible, use -- get -- get data feeds directly from
12 CDK. And my reason for doing that is -- and that's
13 that, as I think is -- is readily apparent, there's some
14 substantial potential liabilities involved. Anytime
15 that you start, you know, moving data around, that
16 potentially has personal- -- personally identifiable
17 information. I want to be doing business with people
18 that, if there is some kind of lawsuit, they can -- if
19 they're found liable, you know, that they can pay the
20 judgment.

21 Q. Do you know that the data broker mentioned here
22 was Authenticom?

23 MS. GULLEY: Objection; form.

24 A. I'm not aware of that. This is a general
25 policy decision.

1 Q. (By Ms. Wedgworth) Where does it say that?

2 MS. GULLEY: Objection; form.

3 A. That's my belief.

4 MS. GULLEY: Peggy, if you're between
5 documents, lunch has been here about 30 minutes.

6 MS. WEDGWORTH: It's here?

7 MS. GULLEY: Yeah, it is.

8 MS. WEDGWORTH: Yeah, let's break for
9 lunch. Thank you.

10 THE VIDEOGRAPHER: This is the end of Media
11 2. The time is 12:17 p.m. We're off the record.

12 (Lunch recess 12:17 to 1:36 p.m.)

13 THE VIDEOGRAPHER: We're back from lunch.
14 This is the beginning of Media 3. The time is 1:36 p.m.
15 We're back on the record.

16 EXAMINATION (Continuing)

17 BY MS. WEDGWORTH:

18 Q. Good afternoon, Mr. Brockman. Does Reynolds'
19 service product have real-time repair order
20 functionality?

21 MS. GULLEY: Objection; form.

22 A. Does Reynolds' service product have
23 real-time --

24 Q. (By Ms. Wedgworth) Repair order functionality?

25 A. Yes. And that's an integral part of it.

1 MS. GULLEY: Objection.

2 Q. (By Ms. Wedgworth) I'm sorry?

3 A. That's an integral part of it.

4 Q. Does Reynolds currently allow third part- --
5 any third party to have real-time repair order
6 functionality?

7 MS. GULLEY: Objection; form.

8 A. When you talk about functionality, I know we
9 have some interfaces that allow look-only repair work.
10 But there is -- you know, there's no, outside of our
11 application software, actually creating repair orders or
12 updating repair orders.

13 Q. (By Ms. Wedgworth) So is that a "no" to the
14 question?

15 MS. GULLEY: Objection; form.

16 A. No. I think my answer is my answer. And I
17 understand that's a little bit long but, I mean, I can't
18 say it yes or no.

19 Q. (By Ms. Wedgworth) So does -- does any third
20 party have the same ability with regard to real-time
21 repair order in the Reynolds system as Reynolds does?

22 MS. GULLEY: Objection; form.

23 A. That's a much better restatement.

24 Q. (By Ms. Wedgworth) Thank you.

25 A. And -- yeah. And the answer is, no. There's

1 no outside third party that has identical access or has
2 identical functionality. We do -- because remember, you
3 know, repair order -- you know, functionality, that's an
4 integral part. That's what the service system does, is
5 it creates repair orders. And, you know, uses them to,
6 you know, process the information and help run the shop.
7 It's not an interface at all. That's -- that's it.

8 Q. Has any third party other than AutoAlert had
9 real-time repair order functionality?

10 MS. GULLEY: Objection; form.

11 A. Again, you know, repair order functionality, as
12 you're using it, is a very broad statement, okay? There
13 is certainly some functionality that, you know, other
14 third parties have in terms of, you know, looked-at kind
15 of access. But to actually start a repair order -- you
16 know, make a repair order -- what you call "repair order
17 functionality," that's the integral part of -- of the
18 service system. And no other third party has that.

19 Q. (By Ms. Wedgworth) The functionality you're
20 speaking about is to create and edit a repair order?

21 MS. GULLEY: Objection; form.

22 A. There is the -- the way that I describe it
23 is -- and that's there's -- there's repair order
24 functionality, using a broad word like -- like you --
25 like you stated. Only, you know, Reynolds software has

1 that, because that is the integral part, you know.
2 That's the center functions of Reynolds service
3 software, okay? Any other access to repair order
4 functions is -- is much more limited. It's limited to
5 look only, that type of access. That's the kind of
6 access the third party had -- have. None of them have,
7 you know, the first type of access, which is the guts of
8 Reynolds service system.

9 Q. (By Ms. Wedgworth) With regard to pricing in
10 June of 2016, did Reynolds implement a transaction fee
11 with regard to RCI to their vendors?

12 MS. GULLEY: Objection; form.

13 A. The time frame was when?

14 Q. (By Ms. Wedgworth) Mid-2016.

15 MS. GULLEY: Form.

16 A. Is that around the date of -- of the Xtime
17 issue?

18 Q. (By Ms. Wedgworth) You'd know that better than
19 me, so I don't know the answer to the question. But I
20 will show you a document that will be Plaintiff's
21 Exhibit 672.

22 (Exhibit 672 Brockman was marked for
23 identification.)

24 Q. (By Ms. Wedgworth) I'll show you what's been
25 marked as Plaintiff's Exhibit 672.

1 Mr. Brockman, have you reviewed Plaintiff's
2 Exhibit 672?

3 A. Yes. And which is very helpful, as a matter of
4 fact, because it does, you know, allow correct focus
5 on -- on the timelines in that, you know -- this
6 particular document is partially in reference to exactly
7 what I thought, which is around the Xtime incident --
8 subsequent to the Xtime incident.

9 Q. So is it fair to say that in mid-2016, Reynolds
10 raised RCI pricing?

11 MS. GULLEY: Objection; form.

12 A. No. That's not correct.

13 Q. (By Ms. Wedgworth) Is it fair to say that they
14 implemented a transaction fee?

15 MS. GULLEY: Objection; form.

16 A. No. That's not correct. You know, what
17 happened was -- and that's that -- and this affects only
18 a very small number of RCI, you know, customers. Again,
19 it also -- it only affects those that actually try to
20 have update capability that could cause the kind of
21 problem that occurred with Xtime.

22 Q. (By Ms. Wedgworth) So with regard to those
23 vendors who were subject to the transaction fee, is that
24 something sometimes called a "ping fee"?

25 MS. GULLEY: Objection; form.

1 A. No. It -- it is called -- and I don't even
2 know that we call it a "transaction fee." It is -- it
3 is a fee for each time a record is -- is added, changed
4 or deleted. And it's only where they have write-back
5 access. You know, in order to talk about this, it's
6 important to talk about what happened to Xtime and --

7 Q. (By Ms. Wedgworth) Actually, I didn't ask that
8 question. I'm just simply asking if there was a
9 transaction fee implemented in mid-2016.

10 A. The answer to that is -- and that's no. That's
11 not the case.

12 Q. A transaction fee was not implemented to
13 vendors with write-back interface?

14 MS. GULLEY: Objection; form.

15 A. It's a transaction fee only if they did an add,
16 change or delete.

17 Q. (By Ms. Wedgworth) And was that fee five cents
18 per transaction?

19 A. That's correct.

20 Q. And a year later, was that
21 five-cent-per-transaction fee increased?

22 A. Yes, it was increased as part of our -- our
23 normal, you know, annual price increase.

24 Q. Are you the ultimate decision maker on that
25 price increase?

1 MR. RYAN: Object to the form.

2 A. Yes and no. The answer is general -- in
3 general terms, yes. I do not actually, you know -- I'm
4 not involved in the actual price increase of each
5 individual, you know, item number that we sell. My
6 involvement has only to do with, you know, what the
7 general percentage is going to be, which is CPI plus 2.
8 And, you know, this year it's -- CPI plus 2 is 4.1
9 percent.

10 Q. (By Ms. Wedgworth) Did you receive and write
11 this email, 672, on or about July 4, 2016?

12 A. Yes, I did.

13 (Exhibit 673 Brockman was marked for
14 identification.)

15 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you
16 what's been marked as Plaintiff's Exhibit 673.

17 A. Yes.

18 Q. Did you receive and write this email in 673 on
19 or about May 9, 2017?

20 A. Yes, that's correct.

21 Q. And does this document reflect your approval of
22 a price increase with regard to the transaction fee?

23 MS. GULLEY: Objection; form.

24 A. I don't see that it -- okay. It does address
25 the per transaction price increase.

1 Q. (By Ms. Wedgworth) And you approved that price
2 increase?

3 A. Yes, I did.

4 Q. Do you know how the price increase of a quarter
5 of a cent was determined?

6 MS. GULLEY: Objection; form.

7 A. It looks to me like -- it says here, it
8 was a -- a 5 percent -- which was CPI plus 2 -- for that
9 year.

10 Q. (By Ms. Wedgworth) Does Reynolds track RCI
11 cost in any way?

12 MS. GULLEY: Objection; form.

13 A. We do not.

14 Q. (By Ms. Wedgworth) I'm sorry?

15 A. We do not.

16 Q. With regard to RCI cost, do those -- do the
17 costs include the developing of interfaces?

18 A. Yes, that would be one of the costs.

19 Q. Is another cost server maintenance?

20 A. Server maintenance, server heat, light, power,
21 server amortization, server repair, replacement, you
22 know, the -- the manpower it takes to supervise all
23 that. I'm sure that there's more factors than that, but
24 those are the ones that come right off the top of my
25 head.

1 Q. Is one of the costs of RCI the DSV personnel
2 compensation?

3 A. Yes.

4 Q. Is Bob Schaefer's salary part of RCI costs?

5 A. I would imagine so. But, again, I repeat which
6 I talked about several times, we do not have cost
7 accounting.

8 Q. I understand.

9 A. But -- but from a theoretical standpoint, yes,
10 you know, his compensation would -- would be something
11 that would -- it would be -- would be included, you
12 know, if we had cost accounting, which we don't.

13 Q. Are there any other RCI costs you're aware of,
14 other than the developing of interfaces, the service --
15 server maintenance costs, the DSV personnel comp, such
16 as Mr. Schaefer's salary? Anything else for RCI costs?

17 MS. GULLEY: Form.

18 A. I think it's a considerable more number of
19 things. Because, you know, for instance, Internet
20 bandwidth is -- would be an important, you know,
21 component, because all these transactions flow through
22 what we refer to as "the hub." And it -- in itself is a
23 completely separate system. It's designed for -- for
24 moving packets of data between servers.

25 We have the issue of -- of fire

1 insurance -- there's probably -- if I had an opportunity
2 to sit down and think about it for a while, I -- I could
3 build a much longer list. But it's -- it's much more in
4 terms of numbers of the things to be considered than
5 what you have there.

6 Q. (By Ms. Wedgworth) And no one at Reynolds has
7 done this list of costs with regard to RCI?

8 MS. GULLEY: Objection; form.

9 A. That's correct. We do not have cost
10 accounting.

11 Q. (By Ms. Wedgworth) Do dealers, as part of
12 their Reynolds contracts, pay Reynolds for storage of
13 their data?

14 A. Only in -- in certain situations. We have a --
15 a product offering, which is called -- the acronym for
16 it is RBDR. And what it does is -- and that's that it
17 provides for backup of -- of dealership's data on a
18 remote automatic basis. This -- if -- if the customer
19 has their own server, they have to have an employee
20 which is charged with running the backups every night
21 and filing the tape away in a fireproof vault.

22 The RBDR product, you know, takes the
23 responsibility of remotely accessing the dealership's
24 server and backing up its data files into our Dayton,
25 Ohio research park office. And that -- that service

1 also provides for -- in the event of disaster recovery,
2 will air freight them a -- a new server and load it with
3 their most recent backup data so they can get back in
4 business.

5 Q. So if the dealership has their own server for
6 storage of their data, is there any cost to the
7 dealership from Reyn- -- that they must pay to Reynolds?

8 MS. GULLEY: Objection; form.

9 A. I'm not -- not quite understanding. Could
10 you --

11 Q. (By Ms. Wedgworth) So -- so if the dealership
12 stores their own data and doesn't use RBDR, is there a
13 cost to the dealership that Reynolds charges?

14 MS. GULLEY: Object to form.

15 A. There -- there's a maintenance charge for --
16 for that server. And what that covers is -- that covers
17 onsite maintenance repair and replacement.

18 Q. (By Ms. Wedgworth) So that's a monthly charge?

19 MS. GULLEY: Form.

20 A. Yes.

21 Q. (By Ms. Wedgworth) To the dealership?

22 A. Yes, that's correct.

23 Q. And that monthly charge to the dealership is
24 for dealer storage of their own data on their own
25 server; is that correct?

1 MS. GULLEY: Objection; form.

2 A. No. It's not a charge for dealership -- it's
3 charged for hardware maintenance for -- for that server.

4 Q. (By Ms. Wedgworth) If a dealership doesn't use
5 the RBDR program you described, is there any cost to the
6 dealership to -- to store the data?

7 MS. GULLEY: Objection; form.

8 A. Again, the -- the charge for the server is for
9 hardware maintenance. There are software monthly fees,
10 which are under contract. Each element of software
11 generally has some requirement to store data, but
12 there's no, you know, fee that is identified as -- as
13 data storage.

14 (Exhibit 674 Brockman was marked for
15 identification.)

16 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you
17 what's been marked as Plaintiff's Exhibit 674. It's
18 Bates number: REYMDL00503332 through 35.

19 Mr. Brockman have you had a chance to
20 review Plaintiff's Exhibit 674?

21 A. Yes, ma'am. My comment to this one is really
22 getting down to the weeds. It's going to take a while
23 to talk about this one.

24 Q. I'm going to try to stay high-level on this
25 one.

1 A. I don't know that's going to be possible.

2 Q. Well, we'll give it a whirl.

3 So did you write and receive this email on
4 or about July 19th, 2017?

5 MS. GULLEY: Objection; form.

6 Q. (By Ms. Wedgworth) Let me try it again.

7 Did you write and receive this email on
8 about the time period of July 16 through July 19, 2017?

9 MS. GULLEY: Form.

10 A. Well, there's -- I've got to go back. There --
11 there's lots of emails on this string. And if you give
12 me a moment, I'll try and count the ones that -- that --
13 I actually sent.

14 Q. (By Ms. Wedgworth) I think the one you sent
15 was on the first page.

16 MS. GULLEY: Form.

17 Q. (By Ms. Wedgworth) And my question -- we'll
18 just limit it to that -- the email on the first page,
19 July 18, 2017. Did you write this?

20 A. Is this July 18th?

21 Q. Yes.

22 A. Yes. That -- That's correct. What's saying
23 here is -- and that's that we're concerned about -- you
24 know, caps. Daily caps, monthly caps. What -- what
25 this relates to is -- and that's that we have a -- a

1 product called "Consumer Reach." That's what you see
2 abbreviated as CR.

3 Q. Mr. Brockman, there's no question pending right
4 now.

5 A. Well, I -- I guess if you're interested in
6 knowing what's going on --

7 Q. I -- I'm definitely interested in some things,
8 but -- but the way it works is I ask the question and
9 you answer. It's just the way the process works.

10 So my question is: Is this part of
11 Reynolds' suite of products to allow email blasts on the
12 part of dealers to customers?

13 MS. GULLEY: Objection; form. And to the
14 prior thing.

15 A. It relates to a -- a Reynolds product, which is
16 being misused by the customer, which is resulting in
17 great dislocation, both to Reynolds and to the customer.
18 Their email traffic is blacklisted, which means it falls
19 in a black hole. They don't know if it's transmitted or
20 not. It's a very serious issue.

21 Q. (By Ms. Wedgworth) Has Reynolds ever attempted
22 to limit or reduce the number of recipients of a
23 dealer's email blast?

24 MS. GULLEY: Objection; form.

25 A. Yeah, prior to this, we had not. Okay? But

1 what's happened is -- and that's they're buying outside
2 direct mail lists that have bad email addresses in them.
3 And then they send out an email blast. And the email,
4 you know, provider gets upset about that, and they
5 blacklist the address. They blacklist the -- you know,
6 the -- the dealership's address. And in this case, what
7 they're doing is they're getting ours blacklisted, which
8 means that we have a whole bunch of customers that get
9 disabled, you know, because one dealer has done
10 something stupid.

11 Q. (By Ms. Wedgworth) And is it fair to say
12 somebody at Reynolds says the problem can be solved by
13 contacting a Reynolds product called Naked Lime?

14 MS. GULLEY: Objection; form.

15 A. If you will point that out to me.

16 Q. (By Ms. Wedgworth) The first paragraph at the
17 bottom, Mr. Barras writes to you.

18 MS. GULLEY: Objection; form.

19 A. That's correct. That's what it says. The
20 Naked Lime product has a more sophisticated way of
21 handling emails than the consumer reach product. The
22 consumer reach product is a very old product. And
23 the -- the Naked Lime product, it has license built into
24 it that since -- when email service provider is throwing
25 away emails and -- to stop the whole process before

1 blacklisting occurs.

2 Q. (By Ms. Wedgworth) So you respond to
3 Mr. Barras by saying, "I think there should be daily
4 caps as well as monthly caps"; is that correct?

5 MS. GULLEY: Objection; form.

6 A. Yes. And that -- that's a -- again, this is --
7 in an effort to stop sending junk to the email service
8 provider, to avoid getting blacklisted.

9 Q. (By Ms. Wedgworth) So Reynolds did limit the
10 number of recipients of a dealer's email blast; correct?

11 MS. GULLEY: Objection; form.

12 A. I'm not sure, you know, what the final
13 disposition was of this problem. I know that -- I do
14 know that now it's no longer the issue it was when this
15 happened. When this happened it was a disaster.

16 Q. (By Ms. Wedgworth) Was the quota done to both
17 legacy and new customers?

18 MS. GULLEY: Objection; form.

19 A. I -- I don't know exactly, you know, what
20 the -- what the final resolution was. You know, these
21 emails relate to a moment in time when the product was,
22 you know -- or when the problem was at its worse.

23 Q. (By Ms. Wedgworth) Well, there was no
24 recommendation to put a quota on Naked Lime; correct?

25 MS. GULLEY: Objection; form.

1 A. It's my understanding that Naked Lime did not
2 suffer from the problem.

3 Q. (By Ms. Wedgworth) So there was no quota put
4 on Naked Lime?

5 MS. GULLEY: Objection; form.

6 A. Again, I don't know, you know, what was done,
7 you know, subsequent to this email. I'm -- it is a --
8 it is -- it's one of, you know, of the issues that goes
9 on in the company with 5,000 employees and tens of
10 thousands of customers. And I -- I see moments in time,
11 but I -- I don't know everything that's going on.

12 Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you
13 what has been previously marked as Plaintiff's Exhibit
14 226. I'm going to focus you on the last page to ask you
15 if it's your handwriting.

16 A. You said the last -- the last, last page?

17 Q. Yes.

18 MS. GULLEY: Objection; form.

19 Q. (By Ms. Wedgworth) Is this your handwriting,
20 Mr. Brockman?

21 A. Yes, it is.

22 Q. And at the top of the page, it says, "AutoAlert
23 Irvine California." And then the handwriting you have
24 in the middle of the page, "per dealer installation
25 fee," the typewritten is "150." It -- it's scratched

1 out to "300." Is that you scratching out "150" and
2 inserting "300"?

3 MS. GULLEY: Objection; form.

4 A. Yes, ma'am.

5 Q. (By Ms. Wedgworth) Is that true for all the
6 other numbers that are handwritten?

7 A. Yes, ma'am.

8 MS. GULLEY: Form.

9 Q. (By Ms. Wedgworth) And then handwritten, "For
10 installation of monthly support fees for Canadian
11 dealers," it's -- "20%" is crossed out. "30%" -- is
12 that your handwriting?

13 A. Yes, it is.

14 Q. And then "Per dealer install fee is per the
15 table," your handwriting again?

16 A. Yes, that's correct.

17 Q. How did you determine to raise the per dealer
18 installation fee for package going from \$150 to \$300?

19 MS. GULLEY: Objection; form.

20 A. This particular customer has a number of -- of
21 real-time interfaces, which means they're very heavily
22 dependent upon, you know, our software functionality to,
23 you know, get done what they want to have done. Every
24 time that we do one of these, we run into the issue of
25 increasing the complexity in our application software.

1 And part of -- part of my decision-making responsibility
2 is -- and that's that there is all kinds of requests
3 for, you know, this and that to be done to our
4 application software.

5 Now, if I say yes to them all, in the last
6 act, everybody goes crazy, because it's become too big
7 and too complex. It's my job to actually think about
8 all the time, you know, what is it that we're doing
9 that's going to increase complexity in our application
10 software? In this particular case, I believe that
11 the -- the complexity load that this particular customer
12 was going to put on us, you know, really required a
13 little bit higher price.

14 And -- you know, that's just, you know, the
15 sum and substance of it. You know, we cannot do, you
16 know, everything that everybody likes -- would like to
17 have without cost, which means we've got to increase the
18 prices a little bit.

19 Q. (By Ms. Wedgworth) Was one of the real-time
20 interfaces for AutoAlert the repair order?

21 MS. GULLEY: Objection; form.

22 A. It is the -- it is the publish repair order,
23 which is taking the -- the -- it's notifying the third
24 party that there's been activity on a repair order.
25 It's either been opened or closed. And they want to --

1 they want to know that, really, right at the instant
2 that it occurs, it's real time.

3 Q. (By Ms. Wedgworth) Did you consult any
4 particular documents, or specific information, when you
5 made these changes?

6 A. No.

7 Q. Did you speak to anyone, specifically, about
8 making these changes?

9 A. Not that I recall.

10 Q. Mr. Brockman, I'll show you what's been marked
11 as Plaintiff's Exhibit 675.

12 (Exhibit 675 Brockman was marked for
13 identification.)

14 Q. (By Ms. Wedgworth) Which is the July 2018
15 financial page -- package. And I'm going to ask you to
16 turn to Page 16 of the document which is, again, going
17 down under the RCI numbers for July through 2000- --
18 2018, there's a "14%" on "Recurring Revenue" for RCI?

19 MS. GULLEY: Objection.

20 Q. (By Ms. Wedgworth) From the previous year?

21 MS. GULLEY: Objection; form.

22 A. Thank you very much.

23 Q. (By Ms. Wedgworth) It's about six lines down
24 from the top. RCI "Recurring" -- "Recurring Revenue" --
25 further up.

1 MS. GULLEY: Is there a question?

2 Q. (By Ms. Wedgworth) Do you see the "14%"?

3 MS. GULLEY: Objection; form.

4 A. I'm not seeing a -- a percentage on the line
5 that I'm looking at anywhere.

6 Q. (By Ms. Wedgworth) If you start at the top of
7 the page and go six lines down.

8 A. Oh, the top of the page?

9 Q. Yes.

10 A. I'm sorry, I was distracted by the highlighting
11 that you have. It's further down towards the bottom of
12 the page.

13 Q. So there's "One Time Revenue," and beneath it
14 is "Recurring Revenue." Keep going down to RCI, under
15 "Recurring Revenue." Not "One Time," but "Recurring."

16 A. Okay. I -- I found --

17 Q. Do you see the "14%"?

18 MS. GULLEY: Objection; form.

19 A. Yes.

20 Q. (By Ms. Wedgworth) And does that -- is this a
21 number that you would look at on a monthly basis?

22 A. Not really. As I've stated before, I spend, on
23 this particular package that comes out once a month,
24 half-hour or less. Because this is not where the action
25 is as far as I'm concerned. I'm much more interested in

1 new projects, new software, new hires, new customer
2 relationships. Those are much more important to me than
3 these detailed numbers.

4 Q. At the bottom of this page where there are
5 three asterisks, at the very bottom, beneath the
6 highlighted numbers that you looked at earlier, there's
7 a note with three asterisks. "Legal Fees for Data
8 Services are \$1,034k in July, \$10,690k YTD or \$18.3M
9 annualized. Case to date (Aug 2017-current) costs total
10 \$16.3M." Do you see that?

11 MS. GULLEY: Objection; form.

12 A. Yes, I do.

13 Q. (By Ms. Wedgworth) Have you looked at that
14 before?

15 A. I think I've actually -- probably as a thumbbed
16 through, I probably noticed that one.

17 Q. Are those -- are those costs with regard to the
18 current litigation we're in now?

19 MS. GULLEY: Objection; form.

20 A. I believe that to be the case. Though it
21 doesn't specifically say that, but that -- I would think
22 that would probably be true.

23 Q. (By Ms. Wedgworth) Is this a -- a figure
24 you've requested to be put in the data?

25 MS. GULLEY: Objection; form.

1 A. No, it is not.

2 MS. WEDGWORTH: If we just a very short
3 break, I want to confer with co-counsel for just a
4 minute. Off the record.

5 MS. GULLEY: Off the record.

6 THE VIDEOGRAPHER: Off the record at 2:15
7 p.m.

8 (Short recess 2:15 to 2:21 p.m.)

9 THE VIDEOGRAPHER: Time is 2:21 p.m. We're
10 back on the record.

11 EXAMINATION (Continuing)

12 BY MS. WEDGWORTH:

13 Q. Mr. Brockman, other than the ODE relationship,
14 the CBR relationship and the informal relationship you
15 spoke about earlier today, does Reynolds have any other
16 relationships with CDK?

17 MS. GULLEY: Objection; form.

18 A. If you could repeat that list? It's OD
19 relationship...

20 Q. (By Ms. Wedgworth) CBR.

21 A. CBR.

22 Q. And the informal relationship you discussed
23 today.

24 MS. GULLEY: Objection; form.

25 A. That's all that I'm aware of.

1 Q. (By Ms. Wedgworth) Are you aware of any other
2 relationships before -- that existed with CDK that no
3 longer exist?

4 MS. GULLEY: Objection; form.

5 A. Not that I'm aware of.

6 Q. (By Ms. Wedgworth) I want to show you
7 Plaintiff's Exhibit 676, which is the last financial
8 statement we'll look at. And it's "December YTD 2017."
9 And I just have a simple question: Is -- this -- did
10 you receive this document in the ordinary course of your
11 job after December 2017?

12 MS. GULLEY: Objection; form.

13 (Exhibit 676 Brockman was marked for
14 identification.)

15 A. I -- I don't know what the legal definition is
16 of "in the ordinary course of my job."

17 Q. (By Ms. Wedgworth) Well, as part of your job,
18 did you -- it -- was this the document you would receive
19 on a regular basis?

20 A. Yeah. Stated that way --

21 MS. GULLEY: Form.

22 A. -- yes, I agree.

23 MS. WEDGWORTH: At this point, I'm going to
24 reserve my remaining time. And I think Mr. Nemelka has
25 a couple of questions.

1 MS. GULLEY: Could I just ask you a
2 question? When you say you reserve you're remaining
3 time, do you -- you mean reserve whatever remaining time
4 there is after Mr. Nemelka, right?

5 MR. NEMELKA: Right.

6 MS. WEDGWORTH: Yes.

7 MS. GULLEY: Just to clarify.

8 EXAMINATION

9 BY MR. NEMELKA:

10 Q. Good afternoon, Mr. Brockman. Mike Nemelka.

11 A. Good morning. (Inaudible.)

12 Q. I just have a few questions for you about just
13 a few documents here at the end of the day. I'd hand
14 you Plaintiff's Exhibit 677, which is an email from you
15 to Mr. Schaefer, forwarding a correspondence that you
16 had with Mr. Anenen in February of 2013. I'll give you
17 a moment to read it.

18 (Exhibit 677 Brockman was marked for
19 identification.)

20 A. Yes.

21 Q. (By Mr. Nemelka) Thank you. So the bottom
22 email is an email from you to Mr. Steve Anenen dated
23 February 5th [sic], 2015; correct?

24 A. Yes.

25 Q. And this was around the time when CDK and

1 Reynolds were negotiating the wind-down agreement; is
2 that right?

3 MS. GULLEY: Objection; form.

4 A. I believe that's correct.

5 Q. (By Mr. Nemelka) And here, the second sentence
6 that you write is, "We need to conclude our deal -- or
7 not -- as I have issues that can no longer wait to be
8 dealt with." Are those issues the security enhancements
9 that you've been holding off on?

10 A. That's correct.

11 Q. And then you relate to him that some "bright,
12 mostly young Harvard MBA-types" have been wanting to
13 talk to you about CDK, right?

14 A. They really -- they start out, they want to be
15 taught about the industry.

16 Q. But then they turned and wanted to talk to you
17 about CDK?

18 MS. GULLEY: Objection; form.

19 A. Yes. That -- That's what it says and that's --
20 that's exactly what was happening.

21 Q. (By Mr. Nemelka) And what they wanted to know
22 is -- and as you write, "What they really want to know
23 about is CDK -- how you operate -- and not very
24 subtly -- what could be done to improve things." That's
25 what they wanted to talk to you about, right?

1 MS. GULLEY: Form.

2 A. These are unsolicited calls. You know, the
3 phone rang, as I pick it up and, you know, there's
4 somebody that wants to talk to me. And this is what was
5 happening.

6 Q. (By Mr. Nemelka) And you told them, as you
7 write here, "I am exactly the right person that you want
8 to talk to -- but I am very busy -- and am not talking."
9 Is that what you told them?

10 MS. GULLEY: Form.

11 A. That's correct.

12 Q. (By Mr. Nemelka) When you say you were exactly
13 the right person that they wanted to talk to about CDK
14 and how they could improve things, what did you mean?

15 MS. GULLEY: Form.

16 A. No question, I -- I've not been in this
17 business for the number of years I have and not learned
18 things about how to run this type of business. I don't
19 know about other business, but I know about this kind of
20 business.

21 Q. (By Mr. Nemelka) And then you conclude in your
22 email to Mr. Anenen, "Just so you know when someone is
23 throwing darts at you -- it isn't me providing them the
24 ammunition."

25 A. Yes.

1 Q. So what did you mean by that?

2 MS. GULLEY: Form.

3 A. Well, I think exactly that. I mean, you know,
4 I think Steve Anenen was under a lot of pressure from,
5 you know -- you know, dissident stockholders who were
6 mostly hedge fund-type kind of folks. And Steve is a
7 very nice person. I personally like the guy. He always
8 has been polite, gentlemanly with me, and I've tried to
9 be so with him. And I wouldn't be in a hurry to see him
10 be ambushed. And so I couldn't help him other than say,
11 "Look, it ain't me, but somebody is gunning at you."

12 Q. (By Mr. Nemelka) Okay. You can put that
13 aside.

14 (Exhibit 678 Brockman was marked for
15 identification.)

16 Q. (By Mr. Nemelka) I've handed you a document --
17 first of all, before I do -- yesterday we talked about
18 how certain applications would need RCI and 3PA
19 interfaces forever from you and CDK. Do you recall when
20 we talked about -- talked about that?

21 MS. GULLEY: Objection; form.

22 A. I think I -- I referred to the fact that, as
23 certain applications -- like, for instance, ReverseRisk,
24 which has a -- a substantial number of, you know, ADP or
25 CDK DMS systems. In order to provide that particular

1 product to them, it would require, on a long -- because
2 as long as they use that product, you know, in order for
3 it to work, it has to have accounting data.

4 Q. (By Mr. Nemelka) And there is some Cox
5 Automotive applications that you believe would need RCI
6 and 3PA interfaces forever from Reynolds and CDK, right?

7 MS. GULLEY: Objection; form.

8 A. There -- there are -- again, using the
9 ReverseRisk example, a dealership that uses the
10 Dealertrack accounting system in order to be able to,
11 you know, have and utilize a ReverseRisk business
12 intelligence system would need to have some manner of --
13 of data access or accounting data.

14 Q. (By Mr. Nemelka) I've handed you Plaintiff's
15 Exhibit 678. Which is an email from you to Ron Lamb,
16 dated June 30, 2015, the subject being "Cox/DT Merger."
17 And I will give you a moment to review it.

18 A. Yes.

19 Q. So this email chain between you and Mr. Lamb
20 relates to Cox Automotive's acquisition of Dealertrack;
21 correct?

22 A. That's correct.

23 Q. And the combining of certain applications
24 already owned by Cox Automotive and those who are owned
25 by Dealertrack; correct?

1 MS. GULLEY: Form.

2 A. I don't know --

3 Q. (By Mr. Nemelka) Strike that. I think that
4 was a bad question.

5 A. Would you like to s- -- have another question?

6 Q. Yes, I do have another question.

7 A. Okay.

8 Q. And you recognized that there were some
9 benefits to Cox Automotive and its ac- -- acquisition of
10 Dealertrack in -- in combining those assets; correct?

11 MS. GULLEY: Objection; form.

12 A. I think as a -- as just a matter of normal
13 course, when there's a major transaction happen amongst
14 other companies that are in the same industry that we're
15 in, I kind of -- I read those articles. And certainly,
16 you know, any good size acquisition, such as this one
17 was -- at the heart of it -- it had to be some manner of
18 synergies. And that's what I said.

19 Q. (By Mr. Nemelka) And what you write here is
20 that -- to Mr. Lamb -- "I think [that] there is no
21 question that they will achieve some more market power
22 by combining VAuto and AAX. However to make these apps
23 really work right, they will require RCI interfaces
24 forever from us and CDK." You wrote that, right?

25 MS. GULLEY: Form.

1 A. Yes, that's correct.

2 Q. (By Mr. Nemelka) And when you say "RCI
3 interfaces," what you mean is RCI interface from
4 Reynolds and a 3PA interface from CDK, right?

5 MS. GULLEY: Form.

6 A. That's correct. And -- and this -- and there
7 is an opinion statement here when I say, "However to
8 make these apps really work right." That's my opinion.

9 Q. (By Mr. Nemelka) Right.

10 A. That's not necessarily a decided fact. And --
11 and the fact these products continue to work as they are
12 today -- but they could also work a little better.

13 Q. And it's because they have -- but in your
14 opinion, is that they would need interfaces with RCI and
15 3PA forever in order to work properly; correct?

16 MS. GULLEY: Objection; form.

17 A. That's my opinion. It would be very much like
18 the ReverseRisk product that we have today, which
19 is an -- an accounting business intelligence software.
20 In order to work, it relies on a continuing source of,
21 you know, accounting data.

22 Q. (By Mr. Nemelka) Does VAuto need -- need
23 accounting data in order --

24 MS. GULLEY: Form.

25 A. No. It doesn't, but -- well, I say it doesn't

1 need it, but it's nice.

2 Q. (By Mr. Nemelka) All right.

3 A. It -- it would be -- you know, you can keep
4 track of what your accounting basis is from a tax
5 standpoint, from a -- a gap accounting standpoint. You
6 can do that by hand in the VAuto system. But it'd be a
7 little nicer if it automatically went over and sniffed
8 the accounting system and came back with a number and
9 put it in VAuto system.

10 Q. All right. You can set that aside.

11 I've handed you what I've marked as Exhibit
12 679, which is an email from you to Bob -- to Bob
13 Schaefer, dated July 1, 2017, with the subject being
14 "Data Access Direction." I'll give you a moment to
15 review.

16 (Exhibit 679 Brockman was marked for
17 identification.)

18 Q. (By Mr. Nemelka) Finished, Mr. Brockman?

19 A. Yes.

20 Q. So Mr. Schaefer -- this -- July 1st, 2017, this
21 was after Authenticom had filed the lawsuit against
22 Reynolds and CDK; correct?

23 A. Yes, that's correct.

24 Q. This is after, also, the preliminary injunction
25 hearing involving that lawsuit; correct?

1 A. Yes, that's correct.

2 Q. And Mr. Schaefer is writing you to say that
3 Reynolds should terminate any of its relationships with
4 Authenticom services; correct?

5 A. That -- that's what he's recommending.

6 Q. And what he says here in the first sentence is
7 that Reynolds is still using Authenticom for MMS. And
8 that's a Reynolds application; correct?

9 MS. GULLEY: Objection; form.

10 A. It is a Reynolds application. It's sold to a
11 fairly small number of -- of dealers that use CDK
12 systems.

13 Q. (By Mr. Nemelka) All right. And IDS
14 ReminderTrax, that's a Reynolds application; correct?

15 MS. GULLEY: Objection; form.

16 A. That's -- that's a service reminder card. It's
17 an application that we sell to service departments. And
18 in some cases, those service departments are -- use CDK
19 software.

20 Q. (By Mr. Nemelka) RepMan, that's also a
21 Reynolds application; correct?

22 MS. GULLEY: Objection; form.

23 A. RepMan is really a General Motors application.
24 It's not -- not really ours. It's reputation
25 management.

1 Q. (By Mr. Nemelka) And ShowroomMagnet -- and
2 that's a Reynolds application; correct?

3 MS. GULLEY: Objection; form.

4 A. And that's a Reynolds application. It is a --
5 it's a very small one. It's the one that provides a
6 cash voucher, a motivation, to get prospective car
7 buyers to come in and take a -- a test drive.

8 Q. (By Mr. Nemelka) And he says for that one,
9 Authenticom was currently pulling data from Reynolds
10 DMSs, right?

11 MS. GULLEY: Objection; form.

12 Q. (By Mr. Nemelka) Do you see that? After -- at
13 Showroom Management -- or ShowroomMagnet?

14 MS. GULLEY: Form.

15 Q. (By Mr. Nemelka) He writes, "Currently pulling
16 from Reynolds DMS." Do you see that?

17 MS. GULLEY: Objection; form.

18 A. I see that.

19 Q. (By Mr. Nemelka) So Reynolds was using
20 Authenticom to pull data from Reynolds dealers; correct?

21 MS. GULLEY: Objection; form.

22 A. I think what's happening there is -- and that's
23 this was a -- a result of an acquisition of a --
24 evidently, fairly recent acquisition. And it, you
25 know -- it had, prior to us acquiring this little

1 product, this little company, that they had been -- they
2 were doing business, obviously, independently with us.
3 And so therefore, they -- since they weren't RCI
4 certified, they were going to a third party to -- to
5 acquire data for them. Which -- this is something I'm
6 not ever happy to see happening. But whenever you have
7 an acquisition, things are not operated in the most
8 efficient manner, and there are stupid things going on.
9 And that would be classified as a stupid thing going on.

10 Q. (By Mr. Nemelka) And you -- and in -- in
11 response to Mr. Schaefer's recommendation to terminate
12 all relationships with Authenticom after they had
13 initiated this litigation, you wrote, "I agree -- do
14 what needs to be done." That's what you wrote; correct?

15 MS. GULLEY: Objection; form.

16 A. Yes. And I might add on that, I obviously
17 wasn't happy about the fact that we've been -- we were
18 sued, in my opinion, without good reason. But it --
19 it's also important, I think, to do business with
20 people, or with entities, that have substance. I don't
21 think Authenticom has much in the way of substance. And
22 I prefer to do business with some folks, particularly
23 when it comes to data. If there's a lawsuit that goes
24 on and there's a big judgement, I'm not the only one
25 standing there.

1 MR. NEMELKA: I have no further questions.
2 I'll reserve the remainder of our time.

3 MS. GULLEY: Thanks. I have some questions
4 before I get started. By my count, you have six
5 minutes.

6 All right. Thank you, Mr. Brockman.

7 Peggy, can you tell me where the exhibits
8 are from yesterday? Are they sort of that sea of
9 information?

10 MS. WEDGWORTH: I think in this area.

11 (Brief discussion.)

12 EXAMINATION

13 BY MS. GULLEY:

14 Q. Let's stick with the document Mr. Nemelka was
15 asking you about. That would be Plaintiff's Exhibit
16 679. All right. Do you have Plaintiff's Exhibit 679 in
17 front of you, sir?

18 A. Yes.

19 Q. One of Mr. Schaefer's statements to you related
20 to having relationships directly with the DMS
21 provider -- do you see it in parentheses? He's list DMS
22 providers CDK, Dealertrack, Automate and Autosoft?

23 A. Uh-huh. (Witness answers affirmatively.)
24 That's correct.

25 Q. And you -- you agreed that he should do what

1 needs -- you agreed that he should do what needs to be
2 done in terms of entering into relationships with those
3 DMS providers; correct?

4 MS. WEDGWORTH: Objection.

5 MR. NEMELKA: Objection.

6 A. That's correct.

7 Q. (By Ms. Gulley) And you did, in fact, ent- --
8 you did, in fact, direct others to enter into
9 relationships with the other DMS providers; correct?

10 MS. WEDGWORTH: Objection.

11 A. That's correct.

12 Q. (By Ms. Gulley) Now, did the other -- did
13 Dealertrack sue Reynolds? Did -- has anybody sued
14 Reynolds over their relationship with Dealertrack?

15 MS. WEDGWORTH: Objection.

16 MR. NEMELKA: Objection.

17 A. Not that I'm aware of.

18 Q. (By Ms. Gulley) Do you know who Dealertrack's
19 lawyer is?

20 MR. NEMELKA: Objection.

21 A. No. Am I supposed to?

22 Q. (By Ms. Gulley) Not necessarily. All right.
23 You were asked some questions about the financial
24 information that you received. Do you recall those
25 questions, in general terms?

1 A. In general terms, they seem to be clustered
2 around RCI.

3 Q. Okay. And one of the things that you have
4 testified about in the last couple of days is that
5 Reynolds does not have cost accounting; correct?

6 MS. WEDGWORTH: Objection.

7 A. That's correct.

8 Q. (By Ms. Gulley) And Ms. Wedgworth was asking
9 you questions about some of the costs of RCI. There are
10 costs associated with RCI; correct?

11 MS. WEDGWORTH: Objection.

12 A. Absolutely.

13 Q. (By Ms. Gulley) What -- what about Reynolds'
14 efforts to secure its enterprise system? What are the
15 costs associated with Reynolds' efforts to secure its
16 enterprise system, in general terms?

17 MS. WEDGWORTH: Objection.

18 MR. NEMELKA: Objection.

19 A. Well, probably the first category has to do
20 with it takes a whole bunch of executive attention, mine
21 included, to focus on the issue of data security. And
22 deciding, you know, what needs to be done, how -- how to
23 get it done, how to react in the marketplace to data
24 security issues, certainly requires us to spend some
25 more money on advertising, you know, to -- to counteract

1 some of the effects of what we've been -- what's been
2 necessary to do from a data security standpoint.

3 You know, that's kind of, you know, the top
4 level. And -- and to go down and enumerate a list of
5 things, it would take -- take a little while. But
6 that's one of the categories that we didn't talk very
7 much about in -- in the previous, you know, questions
8 this afternoon.

9 Q. (By Ms. Gulley) Have you made a conscious
10 choice to invest in system security since the merger by
11 acquisition with the Reynolds and Reynolds company?

12 MS. WEDGWORTH: Objection.

13 A. Yes. I come, originally, from IBM. And the
14 IBM philosophy was very, very much oriented towards
15 security. And in all the software design and
16 development, you know, that I was a part of in the UCS
17 company, data security was extremely important. And I'm
18 very, very pleased to state that, so far as I know --
19 because we never know what we don't know -- that system
20 is totally tight and enjoys that reputation in the
21 marketplace, that it's, from a security standpoint, way
22 ahead of everybody else.

23 When I got to Reynolds, it's kind of like I
24 had been spending my life, you know, mopping and
25 polishing the floor. And I inherited this house, and it

1 has two inches of water on the floor. And we don't need
2 to think about mops and brushes, we need pumps, because
3 that was the situation from a data security standpoint.
4 It was just terrible.

5 And it's been my goal, you know, since that
6 day that -- to get it into the right kind of shape. And
7 it's -- it's vastly improved. Still not there, you
8 know, there's still more work to do. And that's caused
9 by the fact that there are people on the outside, and
10 more of them every day, you know, that want to invade
11 your systems. Starting from PCs up.

12 Q. (By Ms. Gulley) Did you keep that goal a
13 secret in 2006 when UCS acquired the Reynolds and
14 Reynolds company?

15 MS. WEDGWORTH: Objection.

16 MR. NEMELKA: Objection.

17 A. Absolutely not. It's been -- it's known, you
18 know, that that was going to be one of the goals.

19 Q. (By Ms. Gulley) Reporters ever ask you about
20 it?

21 MS. WEDGWORTH: Objection.

22 A. Yes.

23 Q. (By Ms. Gulley) What did you tell them?

24 MS. WEDGWORTH: Objection.

25 A. I told them we were going to improve security.

1 Q. (By Ms. Gulley) Since that time, late Oct- --
2 late 2006, when the acquisition occurred, how much would
3 you estimate you have invested in data security at the
4 Reynolds and Reynolds company?

5 MS. WEDGWORTH: Objection.

6 A. Probably, counting everything, which would
7 include, you know, my time, other executives' time, you
8 know, load on the technical support center answering
9 questions and issues, sales -- salesmen's time dealing
10 with customers over the issue of data security,
11 additional advertising, you know, that we felt compelled
12 to -- to do simply from a -- to keep our image up in the
13 public, you know, marketplace, I wouldn't be surprised
14 if the total number, if we ever sat down to figure it
15 out, would be half a million dollars.

16 Q. (By Ms. Gulley) In response to some of the
17 questions you had begun explaining about the cost of
18 some issues related to Xtime, and you were unable to
19 finish your answer and were told that you'd be able to
20 finish it later -- so here is your chance -- what were
21 you -- what were you talking about with respect to
22 Xtime?

23 MS. WEDGWORTH: Objection.

24 MR. NEMELKA: Objection.

25 A. Well, the issue started on -- came up on a

1 Monday afternoon. And we started receiving complaints
2 from some customers saying, "What have you done?" and
3 "Why is our system running so slowly?" and "We're" --
4 "We've checked around and we're not running any specific
5 batch jobs," you know, "What is" -- "What on earth is
6 going on?"

7 And, you know, we started, you know,
8 accessing some of those systems, and we discovered there
9 was something going on, that there was a piece of
10 software in -- in the Reynolds server. It wasn't -- it
11 was running, actually, in -- in the -- in the -- in
12 the -- the outside part of the server. But what it was
13 doing, it was -- it was adding records at a high rate to
14 the Reynolds server in the customer's location. And we
15 discovered what was happening was -- and that's that
16 Xtime was -- "abusing" would be the right word -- they
17 were just trampling their -- their permission to have
18 access to add, change and delete records. And they were
19 adding, you know, dummy, bo- -- bogus customer records
20 at a high rate. And they added some 700,000. You know,
21 just trashed customer records.

22 And that was what was slowing down the
23 servers who had called and complained. Fortunately, we
24 were able to get it shut off before it went any further.

25 Then came the cleanup problem, or the

1 cleanup issue. We found that -- that some of the --
2 that there were some pieces of -- of junk in -- in
3 the -- these customer records that was consistent across
4 all of them. And, you know, we found that it took us
5 several days to figure this out, that we could write
6 software and we could go read the entire customer file
7 on those servers and find bad records and throw them
8 out.

9 The problem was -- and that's that, in the
10 meantime, the customers continued to operate. And as
11 the customers continued to operate, they would actually
12 transact business on some of these, you know, bogus, you
13 know, customer records. And so we were faced with the
14 issue of it wasn't just a matter of -- of going back
15 and -- and deleting customer records that we could
16 identify, we also had to identify whether or not they
17 had had any business transacted on them. Because if we
18 did, then we would lose that -- lose that data
19 completely.

20 So we ended up having a situation where
21 once we got done doing everything we could from the
22 programming standpoint, the customers had to go back and
23 find the duplicates. Because there would be a
24 duplicate, you know, customer record that was bad, but
25 yet it was still good, because it had some -- some --

1 tracking some business transactions involved.

2 And then in the last act, the customers
3 were actually responsible for cleaning all of that up by
4 hand. Now, what that's like -- it's like, you know,
5 somebody that lives next door who's about half crazy and
6 likes to shoot, and all they did is kill your dog, but
7 they didn't hit you. I mean, so you could be happy
8 about that. Well, but as somebody that's, you know, in
9 charge of -- I'm kind of the executive in charge of loss
10 prevention -- I'm saying, "Well, good God, what could
11 have happened?"

12 Because that same kind of logic could have
13 occurred where they deleted all of our stuff instead of
14 adding. They could have just as well been deleting,
15 because they had write-back access, and if they had sat
16 and deleted, you know, they could have destroyed God
17 knows how much, you know, information. Why did they
18 only get at 400 or so dealerships? I don't know. You
19 know -- you know, the grace of God. You know, it could
20 have been thousands.

21 And so that's the reason why -- that I sat
22 and thought, "How the hell can we put -- you know, we
23 can't prevent this, because we can't stop them. But how
24 can we fix it?" What we did was -- is we went into the
25 software that we allowed them, you know,

1 delete/add/change access to, and we created journalling.
2 And what "journalling" means is -- is we take -- let's
3 say you've got a change, you know, function going to
4 happen. What we do is we take a snapshot of the record
5 before they change it, log it off, and then we take a
6 snapshot of it after -- after -- after change and log it
7 off. And that means that we can go back and we can tell
8 what happened. And in many cases, probably be able to
9 restore.

10 Unfortunately, we run into the situation
11 where what happens in the time interval from when the
12 incident occurs versus when we discovered they want to
13 fix it -- which is business transactions happen on
14 records in between.

15 Now, the -- the logging -- you know, we can
16 tell you which ones they stepped on, but we can't fix
17 it. We can't do an automatic fix, because there's been
18 business transactions that happened that, you know, we
19 don't know about.

20 So that's all part and parcel of -- of the
21 Xtime story. It was a -- a rude awakening to us that --
22 that third-party programmers could be so -- so lax and
23 so stupid as to let something like that happen.

24 Q. (By Ms. Gulley) How much did it cost you to
25 build out this new protection?

1 MS. WEDGWORTH: Objection.

2 MR. NEMELKA: Objection.

3 A. I don't know, because we had to go back in to
4 every application program that we allowed read/write
5 access to and build it in. And then we also had to
6 build the -- the database for these log transactions.
7 And then, of course, the -- the interesting part of
8 these log transactions -- how long do you have to keep
9 them?

10 Q. (By Ms. Gulley) So it's an ongoing expense?

11 MS. WEDGWORTH: Objection.

12 A. It's an ongoing expense, and we don't know how
13 long we have to keep them because, in some cases that --
14 they could have a bust where, you know, the -- the loss
15 was minor. But yet you could have a situation, you
16 know, where they decided -- or not decided, but where
17 they -- through lack of programming skill, they could --
18 they could walk on email addresses.

19 Well, you know, you might not notice that
20 for a couple of months. And then you'd have to go and
21 try and fix it, which means that -- we keep a lot -- lot
22 of file stuff, I think, for retention, seven years. I
23 hope to God we never have to go that far back to fix
24 anything, but somebody had to make a decision as to how
25 long we were going to keep it, so I said seven years.

1 Q. (By Ms. Gulley) In terms of what you've had to
2 spend already in building the log-in functionality and
3 the service base so far, are we talking thousands,
4 millions?

5 MS. WEDGWORTH: Objection.

6 MR. NEMELKA: Objection.

7 A. I would say not -- not as much as a million,
8 but probably -- probably made a pretty good hole in
9 700,000 or 800,000.

10 Q. (By Ms. Gulley) Earlier, I had asked you --

11 A. And then there's the ongoing cost. I mean,
12 there's -- you know, the stuff that you vaulted, you've
13 got to keep it. You've got to sell on it, you've got --
14 you've got to spin it.

15 Q. Earlier, I had asked you what you -- you
16 estimated the investment in system security, and
17 the rec- -- the -- and we just saw the transcript looked
18 like you had said half a million. I wanted to make sure
19 I got that right.

20 A. No. It's half a billion.

21 MS. WEDGWORTH: Objection.

22 Q. (By Ms. Gulley) Say it again.

23 MS. WEDGWORTH: Objection.

24 A. Our total investment for data security forever
25 and a day probably is in the order of half a billion.

1 Q. (By Ms. Gulley) How do you feel about data
2 brokers?

3 MS. WEDGWORTH: Objection.

4 MR. NEMELKA: Objection.

5 A. The same way I feel about the unprintable --
6 but, you know, certainly, in polite company --

7 Q. (By Ms. Gulley) "The elevator speech"?

8 MS. WEDGWORTH: Objection.

9 A. You know, the problem with data brokers is --
10 is -- you know, it starts off from a legal standpoint.
11 You know, according to Gramm-Leach-Bliley, you know,
12 dealerships are considered financial institutions. And
13 as such, they have certain responsibilities.

14 There's also another act that -- that
15 applies directly. And what it says in -- in short order
16 is -- and that's that a dealership is considered a
17 financial institution. And they're responsible for the
18 security of the data that they accumulate in their
19 process of arranging financing. If they are to use a
20 third-party service provider, they must have a contract
21 with that service provider, you know, that specifies
22 who's responsible for what, who indemnifies who and what
23 the liabilities are and so forth.

24 A data broker, in the -- in the simplest
25 sense, what they're doing is they're extracting data out

1 of a dealership system. It's got to be a contract
2 there. And then, you know, whoever that they send the
3 data to, there's got to be another contract there. So
4 there -- there's this, you know, myriad of -- of
5 contracts that are required in order to be legal.

6 Data brokers is -- you know, they're --
7 they're little, small companies for the most part,
8 and they don't have the resources to do that. They, in
9 many cases, are kind of oblivious to -- to the fact
10 that, you know, they are required to do all of these --
11 these things according to the law.

12 And so therefore, in my opinion, they're
13 absolute outliers. Secondly, there's called a -- it's
14 called a Computer Fraud and Abuse Act. Computer Fraud
15 and Abuse Act is very, very clear that if you enter into
16 a computer system, and the software on a computer
17 system, if you're not you authorized to do so, you're in
18 violation of that law.

19 Well, people don't pay a lot of attention
20 to the fact that -- that Reynolds owns the software
21 that's on every dealership system. If they license that
22 software to the dealer and the license is not an
23 unlimited license, it's very much a limited license that
24 says that you cannot, you know, allow a third party to
25 access or to use that software because you have no

1 license to do that, your license covers only your
2 employees and direct agents.

3 Q. (By Ms. Gulley) How long have you had those
4 restrictions against the use of third-party data
5 brokers?

6 MS. WEDGWORTH: Objection.

7 A. I think in the case of UCS software, it's been
8 at least 25 or 30 years. As far as Reynolds is
9 concerned, when I got there 12 years ago, they were
10 already there, and had been around for a while. But I
11 don't know how long.

12 Q. (By Ms. Gulley) If -- during this deposition,
13 we've heard you, on numerous occasion, call data
14 brokers, like, Authenticom "hackers and bandits"; is
15 that correct?

16 MS. WEDGWORTH: Objection.

17 MR. NEMELKA: Objection.

18 A. That's correct.

19 Q. (By Ms. Gulley) Why do you feel -- what --
20 what are the risks to Reynolds system such that you
21 would give them those names, "hackers and bandits"?

22 MS. WEDGWORTH: Objection.

23 MR. NEMELKA: Objection.

24 A. Well, first of all, what they're doing is --
25 and that's that they have used -- and Steve Cottrell has

1 admitted in open court how often that he had worked, you
2 know, gaining entrance, you know, getting passed the
3 security barriers, to access Reynolds software. And I
4 think that qualifies him for the name "hacker."

5 You know, what the big worry is -- and
6 that's that to the extent that a third-party hacker is
7 involved, there's a security breach and that there's
8 going to be all hell to pay. And, you know, we've been
9 through this. You know -- this is -- was my first --
10 matter of fact, that's how I met Michael. It was a
11 Chevrolet dealership by the name of Franklin, and I
12 don't know where they were in the company -- in the
13 country, but the general manager of that dealership had
14 access to a master password. And he could run any kind
15 of reports or any kind of listings that -- that he
16 wanted. Which, that's not unusual for, you know -- he
17 was the onsite person in charge. He was the general
18 manager.

19 Well, he used that -- that password
20 authority to download the entire customer files of that
21 customer -- of that dealership onto his laptop. And
22 when he left -- and I don't know under what
23 circumstances he left, but it kind of sounds like maybe
24 not nice circumstances -- he saw fit to post the
25 customer database in its entirety on the Internet.

1 And there were, you know, people whose
2 names and information was posted that were not happy,
3 and they called the FDC. And the FDC came down on that
4 dealer and said, you know -- I don't know whether they
5 had their guns drawn or not, but I mean, they -- they
6 were -- it was -- it was very shocking -- and asked the
7 dealer what on earth he had done. The dealer was, like,
8 completely unknowledgeable of what all happened. And as
9 they talked to him some more, he said, "Look, I
10 understand what you're talking about. You need to talk
11 to Reynolds. They're our computer guys, they'll know
12 everything."

13 So the next thing we know, we have FTC on
14 our door, and we don't know much about dealing with the
15 FTC. Matter of fact, never been around them at all.
16 And -- but fortunately -- fortunately, we got a good
17 piece of advice from one of -- one of our outside
18 attorneys --

19 MS. GULLEY: Okay. So you can't talk about
20 privileged information. I'm sorry, sir.

21 THE WITNESS: Oh, okay.

22 Q. (By Ms. Gulley) But -- but you're talking
23 about the FTC. You're not talking about antitrust,
24 you're talking about the privacy people; is that right?

25 A. I'm talking about the privacy people. Can I

1 talk about that?

2 Q. No.

3 A. No?

4 Q. You cannot reveal privileged information.

5 MS. WEDGWORTH: Objection.

6 Q. (By Ms. Gulley) But --

7 A. I can say, you know, what -- what the effect
8 was on us.

9 Q. What was the effect on you of the FTC's
10 investigation into --

11 A. Well, we obviously --

12 Q. -- Franklin?

13 MS. WEDGWORTH: Objection.

14 MR. NEMELKA: Objection.

15 A. We obviously started spending a bunch of money,
16 a whole pile, simply to convince the FTC that we did
17 nothing wrong. The computer system was not in any way
18 at fault or involved.

19 But it doesn't take much of a leap in my
20 mind to think about, "Well, what if the computer system
21 was involved? What -- what if something happened that
22 caused a breach? We better be prepared for all hell to
23 break loose and then it would be really expensive." And
24 so the idea of having any kind of data broker involved
25 in any of that kind of process to me is not smart --

1 (Brief discussion.)

2 (Exhibit 274 was marked for
3 identification.)

4 Q. (By Ms. Gulley) I'm marking and handing to you
5 Defendant's Exhibit 274. Less you think the plaintiff's
6 and defendants' numbers are widely disparate, the
7 plaintiff's skipped numbers. Ours -- we did not.
8 Here's Defendant's 274.

9 (Brief discussion.)

10 Q. (By Ms. Gulley) Take a minute to review
11 Defendant's 274.

12 A. I'm -- I'm familiar with this.

13 Q. Who's Robert T. Brockman, II?

14 A. He's my son.

15 Q. We were discussing a moment ago the Franklin
16 incident. What is -- what is this about, the --
17 Defendant's Exhibit 274?

18 MS. WEDGWORTH: Objection.

19 A. This one here is -- is -- I believe is
20 DealerBuilt. DealerBuilt, if I can recall what happened
21 on that one, they had a lot of very sizeable customers.
22 And they were sending backups of the local server in the
23 dealership back to a central point. And when they
24 transmitted the data, it wasn't encrypted. And it
25 caused the exposure of -- I want to say, like, 400,000

1 or so, that they know of, you know, individual customer
2 records were exposed.

3 And that meant that -- in any kind of data
4 exposure, you know, the first -- the first cost is \$2
5 apiece it costs you per name to send a registered letter
6 to the person whose data was exposed and to tell them
7 that their data has been exposed and they should be
8 cautious about, you know, what's happening. Because
9 their -- you know, their personal information may have
10 gotten into the wrong hands of some bad people.

11 And then, after that, you start dealing
12 with the FTC, which I -- I don't have any knowledge to
13 what that cost in this particular situation, but I bet
14 it was a bunch. And I think this was one of the first
15 wake-up calls of a really large data breach in the
16 automotive business that we know about.

17 Because we always have to remember -- it's
18 kind of like in -- in the banks where they have worries
19 about bad people stealing money from the banks
20 internally. You never hear about those. Now, maybe
21 that's because none of them ever happen. I don't think
22 that's the case. I think they're concerned about the
23 publicity. I think they're concerned about bad guys
24 getting ideas. And, you know, that's certainly what
25 could be happening here.

1 Q. (By Ms. Gulley) Would you read what you sent
2 to your son, for the record?

3 A. Yeah. It's short. Three words. "It finally
4 happened. Love, Dad."

5 Q. What did you mean when you said that?

6 MS. WEDGWORTH: Objection.

7 A. Well, he and I have had conversations about
8 this a lot. You know, my son has a degree in computer
9 science from Rice University, along with a master's in
10 electrical engineering and an MBA. And he's -- he's
11 interested in these kind of things, so we talk about
12 them. He's 44 years old. I don't know if he's quite
13 grown yet, but he's getting there.

14 Q. (By Ms. Gulley) What do you mean by "finally"?

15 A. Well, I -- I've been predicting it for a long
16 time, and so it -- it was -- while it was an unhappy
17 situation, at least it serves the fact that I've not
18 been worrying in vain. We have -- we have -- in terms
19 of numbers of dealerships, you know, numbers of customer
20 records and whatever, we obviously has vastly more than
21 DealerBuilt did.

22 Q. Have you been criticized for that?

23 A. I've been criticized a lot for -- for data
24 security, which is incredible. But I think what really
25 happens in -- in the dealership world is -- and that's

1 that it's not the dealer. It is the -- it is the
2 department head who, short term, you know, wants to get
3 his -- what he wants to get done, what he wants to get
4 done. He doesn't care about security. He may not even
5 be around that dealership next year. He has a very
6 short-term outlook.

7 He is completely -- from a liability
8 standpoint, it's not going to be his personal liability.
9 He's worried about getting done whatever he can get done
10 so his bonuses at the end of the month is -- is good
11 at -- as good as it could be. He's a very short-term
12 thinker. And those are the people that make the most
13 noise, you know, when -- when security enhancements take
14 place.

15 Inevitably, when you -- when you get to the
16 dealer and explain to him the liabilities that are
17 floating around and -- and what -- what -- what's going
18 on, what we're trying to prevent, you know, the dealer
19 says, "Okay, we understand."

20 Q. I'm going to hand you Defendant's 275. Take a
21 moment to look at that.

22 (Exhibit 275 was marked for
23 identification.)

24 Q. (By Ms. Gulley) Have you had a chance to look
25 at that?

1 A. Yes.

2 Q. All right. This is a series of emails and a
3 report relating to the Randall Reed dealership. Do you
4 recall this exchange?

5 MS. WEDGWORTH: Objection.

6 A. Yes, I do.

7 Q. (By Ms. Gulley) In the very top email, sent
8 September 17, 2013, from you, you say, "Chris, the
9 attached report shows the scheduled unattached
10 automatically run reports being run on Randolph Reed's
11 345 server." Do you see that?

12 MR. NEMELKA: Objection.

13 A. Yes, I do.

14 Q. (By Ms. Gulley) And then what did you say?

15 MS. WEDGWORTH: Objection.

16 A. It says, "It's a wonder that this box runs at
17 all, much less running docuPAD with acceptable response
18 times."

19 Q. (By Ms. Gulley) What does that mean?

20 MS. WEDGWORTH: Objection.

21 A. Well, what's happened here in this -- the
22 customer, this Randall Reed company has called up, you
23 know, very, very, very unhappy that their 345 server --
24 and this is an older server. This is a server that
25 probably -- the last one was manufactured 15 years ago.

1 It's that old. And it is overrun with batch jobs such
2 that docuPAD response time is not as good as it ought to
3 be. Of course, when you run this report --

4 Q. (By Ms. Gulley) And just for the record,
5 you're looking at the attachment?

6 MR. NEMELKA: Objection.

7 A. These are a list of -- of -- of what we call
8 "scheduled batch jobs." And it -- it shows the user ID
9 that set it up in the first place, and then a
10 description of what it is, and then how many stores it's
11 located -- not how many -- which store numbers -- which
12 store number -- this first one is in Store No. 9.

13 And then it shows whether it's a report
14 generator or query builder or a download. And then how
15 many hours a day did that -- did it run? It runs every
16 1 and 1/2 minutes, 13 and 1/2 hours a day.

17 So what's happened is -- and that's -- and
18 this reports an available report on -- on every system.
19 The customer has completely dumb-assed themselves.
20 And -- and what they've done is they've completely
21 ignored the fact that all computers have finite
22 resources, and you cannot load on them, you know,
23 immense amounts of work. And this is probably the worst
24 example I've ever seen about this.

25 And it's -- typically, a lot of these --

1 these automatically scheduled reports, that is a sure
2 sign of a hacker. Because what they're doing is -- and
3 that's they want the report run at a specific time where
4 they can go back and get it and -- and pull it off to,
5 you know, their computer in the sky.

6 So I found this one interesting. I mean,
7 it, you know -- this one's so bad, you got to laugh.
8 Just -- it's -- it's, you know, just beyond the pale. I
9 mean, this one here, when we have a -- a place on the
10 wall of our computer history where we have an example of
11 the worst use ever of remotely unattended batch jobs,
12 this is it right here.

13 Q. (By Ms. Gulley) Look at the -- the -- you see
14 that the rows are numbered -- Row 9? Maybe yours aren't
15 numbered. So going down nine spots -- guys, I've just
16 put an arrow -- so one, two, three, four, five -- and
17 for the record, I've put an arrow at "Superior." That's
18 where I want you to look.

19 A. Okay.

20 Q. Who is that? What is that? What do you think
21 that is?

22 A. I think that's Phil Bautista.

23 Q. So is Superior Solutions a hostile data broker?

24 MS. WEDGWORTH: Objection.

25 MR. NEMELKA: Objection.

1 A. They are. Of the worst kind.

2 Q. (By Ms. Gulley) Are they -- are they in the
3 same space as Authenticom?

4 MR. NEMELKA: Objection.

5 A. Yes.

6 Q. (By Ms. Gulley) All right. And so how
7 frequently was SIS accessing this Reynolds system at
8 this time?

9 MS. WEDGWORTH: Objection.

10 A. Every two and a half minutes. And accumulating
11 four and a half hours a day worth of compute time.

12 Q. (By Ms. Gulley) What impact can that have on
13 Reynolds technology?

14 MS. WEDGWORTH: Objection.

15 MR. NEMELKA: Objection.

16 A. It -- it overloads it. Even a really good
17 server, you know, shouldn't have anything like that
18 running. And you're pretty good. I didn't catch that.

19 MS. GULLEY: Let's go off the record and
20 take a break. We've been going a while without a good
21 break. I'm going to still be on when I -- when we come
22 back.

23 THE VIDEOGRAPHER: This is the end of Media
24 3. The time is 3:16 p.m. We're off the record.

25 (Short recess 3:16 to 3:31 p.m.)

1 THE VIDEOGRAPHER: This is the beginning of
2 Media 4. We're back on the record at 3:31 p.m.

3 EXAMINATION (Continuing)

4 BY MS. GULLEY:

5 Q. When we were talking about Xtime earlier, I
6 don't think I circled around to this question. The
7 Xtime situation that you described, how does that relate
8 to the transaction fee issue that Ms. Wedgworth was
9 asking you about?

10 A. The -- the process of -- of somebody -- some
11 entity like Xtime doing add/change/delete write-back
12 information, what that does is that generates a bunch of
13 extra work we've got to do. Plus, we've got to save the
14 before-and-after images. And we did it on a
15 per-transaction basis simply because we believed that it
16 would always be a number of RCI customers that don't
17 need that, because they're not doing add/change/delete
18 write-back.

19 And therefore, it would be unfair just to
20 have a cover-blanket increase to cover the cost of doing
21 that. We put it on -- on the third parties that are
22 actually using that -- that facility.

23 Q. Do you know what the impact of that transaction
24 fee has been on the number of write-back transactions?

25 MS. WEDGWORTH: Objection.

1 A. I -- I'm sure that it has been reduced, because
2 I think before that, there were -- there was no -- no
3 charge for write-back transactions. And so once there
4 became a charge, they came back and changed how they --
5 how they did things. Some cases, you know, for
6 instance, they would want to update a repair order or
7 update a service reservation, you know, frequently. You
8 didn't really need to do that.

9 Q. (By Ms. Gulley) So what's the impact on the
10 system load now?

11 MS. WEDGWORTH: Objection.

12 MR. NEMELKA: Objection.

13 A. It -- it improved the situation from the system
14 load but, you know, the -- there's still the logging.
15 You know, it is a fair amount of overhead.

16 Q. (By Ms. Gulley) Another topic you talked about
17 over the last couple of days is the automated access to
18 the Reynolds system. Does Reynolds allow its customers
19 to provide automated access to third parties?

20 MS. WEDGWORTH: Objection.

21 Q. (By Ms. Gulley) Themselves?

22 MS. WEDGWORTH: Objection.

23 A. No. They're -- they're not allowed to do that
24 and the security changes won't -- won't let that happen.

25 Q. (By Ms. Gulley) But what if an automated third

1 party says, "Oh, no, we're the agent of the dealer."

2 Does Reynolds allow that?

3 MS. WEDGWORTH: Objection.

4 A. No.

5 Q. (By Ms. Gulley) You also mentioned, several
6 times, Reynolds reporting functionality. Can dealers
7 give their operational data out to third parties?

8 MS. WEDGWORTH: Objection.

9 A. Yes.

10 Q. (By Ms. Gulley) And so on the one hand, we
11 talked about system access, no automated access, but
12 they can provide their data. How can they do that?

13 MS. WEDGWORTH: Objection.

14 A. We have a -- a data reporting facility. And
15 what they can do is -- and that's they can -- say, for
16 instance, run a print job that's not ever printed.
17 Instead, it's sent to disk and then they -- they
18 transmit that data in that dataset outside in -- as far
19 as we're concerned, you know, once they do it
20 themselves, we're out of the track.

21 Q. (By Ms. Gulley) So if Authenticom was the
22 recipient of that data from the dealer, is that
23 permitted?

24 MS. WEDGWORTH: Objection.

25 MR. NEMELKA: Objection.

1 A. Yes.

2 Q. (By Ms. Gulley) I'm sorry?

3 A. Yes. I think there was one -- one of the, you
4 know, big users of -- I can't remember. It's -- it's
5 not a good example.

6 Q. What -- what about CarFax? If the dealer
7 wanted to download its information and send it to
8 CarFax --

9 A. That's what I was thinking about.

10 MS. WEDGWORTH: Objection.

11 MR. NEMELKA: Objections.

12 A. And they do.

13 Q. (By Ms. Gulley) I did not know you were
14 thinking that, by the way.

15 A. Yeah. They do. They use -- they use a
16 reporting mechanism and download their data to CarFax
17 and, as a result, CarFax is -- never became an RCI
18 customer. And that's fine.

19 Q. (By Ms. Gulley) As well?

20 MS. WEDGWORTH: Objection.

21 A. Yes. (Inaudible.)

22 Q. (By Ms. Gulley) Is the wind-down agreement
23 between Reynolds and CDK from 2015 still in effect?

24 MS. WEDGWORTH: Objection.

25 A. No.

1 Q. (By Ms. Gulley) Ms. Wedgworth had said -- or,
2 no, I'm sorry, it was Mr. Nemelka had called it a
3 "five-year agreement." The agreement was 2015, five
4 years is 2020. Was it a five-year agreement?

5 MR. NEMELKA: Objection.

6 MS. WEDGWORTH: Objection.

7 A. No. It was an agreement until the -- the
8 stand-down process had been -- had been completed, which
9 it was completed, satisfactorily.

10 Q. (By Ms. Gulley) Ms. Wedgworth asked you about
11 exempted user IDs in various contexts. Are exempted IDs
12 exempted from all Reynolds security policies?

13 MS. WEDGWORTH: Objection.

14 A. No. Only for specific security policy issues.

15 Q. (By Ms. Gulley) Who's knowledgeable on that --
16 those issues?

17 MS. WEDGWORTH: Objection.

18 A. Maybe Kelly Hall.

19 Q. (By Ms. Gulley) All right. We've also talked
20 about DMS competition. Do dealers change DMS providers?

21 A. Yes, they do.

22 Q. Do dealers switch away from Reynolds?

23 A. Yes, they do.

24 Q. Do dealers switch away from CDK?

25 MR. NEMELKA: Objection.

1 A. Yes, they do.

2 Q. (By Ms. Gulley) Do they switch away from Cox
3 Automotive Dealertrak?

4 MS. WEDGWORTH: Objection.

5 MR. NEMELKA: Objection.

6 A. Yes, they do.

7 Q. (By Ms. Gulley) Now, you had mentioned there,
8 you do not have an agreement between Reynolds and Cox
9 Automotive Dealertrack with respect to conversions; is
10 that right?

11 MS. WEDGWORTH: Objection.

12 A. Correct.

13 Q. (By Ms. Gulley) But dealers, nevertheless,
14 leave Cox Aut- -- are able to switch between Reynolds
15 and Cox; correct?

16 MS. WEDGWORTH: Objection.

17 A. That's correct. That process is -- is really,
18 you know, relatively simple. What you do is -- and
19 that's that you -- you print off a bunch of reports --
20 and I say "print off" -- you run a bunch of print jobs,
21 but don't print them off. Instead, you send them to
22 disk. And then that disk or thumb drive goes to the
23 assuming, you know, competitive system, and then they
24 run a series of software programs that parse the printed
25 information and put it into data records. And that

1 is -- that's how we convert any non-CDK, you know,
2 customer. For instance, if we convert a Dealertrack
3 customer, we do it all with print jobs, and are very
4 familiar with it doing it. It's really very simple
5 programming. It's Tab A, Slot B. You know, it's very,
6 very simple programming.

7 Q. (By Ms. Gulley) Let me hand you what
8 Ms. Wedgworth marked Plaintiff's 657. This is the draft
9 letter to Hendrick discussed between you and Mr. Lamb.
10 Do you recall that area of questioning?

11 A. Yes.

12 Q. So just now, you gave an example of a dealer --
13 how -- how you would convert a dealer other than a CDK
14 dealer; is that accurate?

15 MS. WEDGWORTH: Objection.

16 A. That's right. (Inaudible.)

17 Q. (By Ms. Gulley) Now, in this draft letter that
18 Mr. Lamb wrote, he discusses a -- a drop in sales and
19 other costs of a conversion away from Reynolds. Do you
20 remember that? And I'm looking at this -- this page
21 with the chart ending in 023.

22 MS. WEDGWORTH: Objection.

23 A. Yes.

24 Q. (By Ms. Gulley) Now, would you expect a dealer
25 that was switching away from a different DMS provider

1 into Reynolds to have the same sort of costs?

2 MS. WEDGWORTH: Objection.

3 A. Yes. You know, if we were converting them off
4 of Dealertrack, you know, we would go through the same
5 process. And I -- I've tried to make the point that the
6 greatest variable in any kind of conversion is whether
7 or not, you know, the dealership personnel are motivated
8 and actually take their courses, pass their tests and
9 learn how to new -- use the new software. And that's
10 key. And it's more important than anything else.

11 Q. (By Ms. Gulley) Does Reynolds help customers
12 do that?

13 MS. WEDGWORTH: Objection.

14 A. Yes. We have an education department and we
15 have onsite installers, and we have remote install
16 support people as well.

17 Q. (By Ms. Gulley) Would you consider yours
18 superior or inferior to CDK's?

19 MS. WEDGWORTH: Objection.

20 A. Well, I think that without question. We're
21 superior. But that's -- you know, that -- that's the
22 nature of -- of our business model. What we try to do
23 is -- is -- we're not the cheapest. Don't want to be
24 the cheapest. We want to be the best.

25 Q. (By Ms. Gulley) Turn back to that first page.

1 So the date of this email exchange is in early September
2 2015. What does Hendrick do after September 2015, after
3 this pitch was made?

4 MS. WEDGWORTH: Objection.

5 MR. NEMELKA: Objection.

6 A. Really, really, you know, unhappy thing.
7 They -- they issued termination notices to us and
8 announced that they're going to CDK. And I was very
9 disappointed.

10 Q. (By Ms. Gulley) Did they sign a contract with
11 CDK?

12 MS. WEDGWORTH: Objection.

13 A. Yes, they did.

14 Q. (By Ms. Gulley) So they switched to CDK?

15 MS. GULLEY: Objection.

16 A. They didn't. They didn't switch yet.

17 Q. (By Ms. Gulley) They decided to switch?

18 MS. WEDGWORTH: Objection.

19 A. They decided to switch. They contracted to
20 switch. And then -- which is a further, you know,
21 longer story -- they decided to switch. And then, as
22 the switch began, it began first with a very small
23 dealership that was, basically, a new start. And they
24 had all new people and it was -- you know, therefore
25 pretty easy, pretty simple conversion job, which went

1 okay.

2 The second dealership that they converted
3 was a monster Toyota dealer, which is within eyesight of
4 Hendrick's headquarters. And it was a -- an absolute
5 disaster from the conversion standpoint. But not
6 because of the software, not because of the systems, not
7 because of the data conversion, not because of anything
8 like that.

9 There is a process that is very, very
10 important in the service department, which it's called
11 "opcodes." And opcodes are -- they're unique to each
12 dealership. Each dealership has kind of built their own
13 opcode structure. And typically, it's a two-digit or a
14 three-digit number. And its whole purpose is -- is to
15 save time in typing. When you're opening up a repair
16 order, there's a tremendous amount of keystroke-kind of
17 work that has to be done. And the opcodes shorten that
18 dramatically.

19 Well, there had been an initiative inside
20 Hendrick, which had not been accomplished or even
21 attempted, which was to standardize opcodes amongst all
22 105 dealerships. And the goal -- or the reason to do
23 that was, that way you could move a service advisor from
24 one dealership to another dealership, and he would not
25 have to relearn the opcodes. Because if you put a

1 service adviser into an environment where there's all
2 new opcodes, he's crippled, because he has to look up
3 whatever opcode it is. And -- and he has to keep doing
4 that until he's finally memorized, you know, whatever
5 the new set of opcodes are from the place he's been
6 transferred to.

7 They wanted to avoid that forever and all
8 time. Unfortunately -- and I don't know the exact --
9 who talked to who about what, but the upshot was -- and
10 that's that Hendrick decided -- and -- and CDK let them
11 change the opcodes on the day of conversion to the new
12 system.

13 And the result was -- and that's that, you
14 know -- it's always been on Monday mornings, people
15 always bring their cars in, and they've kind of made
16 their to-do list over the weekend and -- you know, day
17 one is, you know, you bring your car into do this or do
18 that. So there's a lot of -- right -- typical Monday
19 morning.

20 The process of opening a repair order was
21 absolutely crippled, because it was all new opcodes and,
22 you know, the service advisors had to look up every
23 opcode, which just, you know, really made it proceed at
24 a snail's pace. Which meant that the -- the technicians
25 who were paid on incentive programs, they did not get

1 work to do until almost noon. And they were not happy
2 about that. They lost half a day's pay.

3 But everybody, I think, had a little bit
4 of, you know, forgiveness built in, because, after all,
5 they were converted to the new system and it was --
6 they -- they expected some things not to go right.

7 The second day, it didn't get any better.
8 And by noontime, you know, the techs were absolutely up
9 in arms. It was an absolute up rising. And they were
10 saying -- which is absolutely true -- they were top
11 technicians, some of them had been with Hendrick 25
12 years or more, and they were just wailing. And so the
13 call for help went out to -- Mr. Hendrick needed to come
14 and address the group, which he did. And he did a smart
15 thing. He said, "Guys, I promise you, you're going to
16 make 10 percent more this month than you've ever this
17 year. Be patient with us."

18 The techs said, "Okay, we understand."

19 And then another interesting thing
20 happened. Success of data conversions has a lot to do
21 with the quality of personnel, experienced personnel,
22 really. Obviously, there was -- there was some real
23 lack of experience, because the CDK conversion group
24 should have resisted this idea -- this crazy idea of
25 changing opcodes on the first day of installation. So

1 "Mr. H.," as he's called -- he's very low-key kind of
2 guy. And he -- he went around and just kind of talked
3 to folks, you know, after, you know, the initial fire
4 had been quenched. And he walked up to a -- a CDK
5 installer and, you know, talked to him, you know, "Well,
6 how are you? My name is Rick Hendrick." Shook his
7 hand. Rick's -- you know, Rick's a hero figure in -- in
8 car racing. He's one of "the" guys. And he was talking
9 to this one young person and, you know, in the course of
10 the conversation, he's -- he asked, well, "How long have
11 you been with CDK?"

12 And the person answers, "Well, I'm not with
13 CDK. I'm -- I'm a contractor."

14 "Oh, really? Okay. How long have you been
15 a contractor?" and so forth. And he talked to several
16 others, you know, kind of got the same answer. And he
17 realized that he had been promised the best install team
18 and he had not gotten it. And Rick Hendrick's the kind
19 of person -- he's a very simple person. You only get to
20 lie to him once.

21 And the next day he called us up and said,
22 "Bob," you know, "we've got problems. If you won't
23 punish us, we'd like to come back."

24 And the answer is, obviously, "Whatever our
25 last proposal is, that's it."

1 And so they came back. And, you know,
2 that's probably one of the most amazing, you know,
3 conversion stories that I've ever heard and -- and the
4 software, our software, had nothing to do with it. You
5 know, CDK's software had nothing to do with it. There
6 was nothing wrong with the hardware. Probably not that
7 much wrong with the people. If they had just not
8 changed opcodes.

9 Q. (By Ms. Gulley) Why did you lose Hendrick in
10 the first place?

11 MS. WEDGWORTH: Objection.

12 A. Well, that's a very pertinent question. Mr. Ed
13 Brown is, nominally, the president, is a required
14 banker. He was with Bank of America there in Charlotte
15 for 30 some-odd years. He retired. And he had banked
16 Rick over the years and knew him well.

17 And Rick decided that he wanted to spend
18 more time racing, and he hired Ed Brown. And Ed Brown
19 knows nothing about computers. He probably -- by now,
20 he knows a little bit about dealerships but, you know,
21 that's not been -- he's definitely not what you would
22 call a -- an experienced automotive executive. And I
23 think what he wanted to do is he wanted to go do
24 business with CDK because they were a big public company
25 and we're not.

1 Q. (By Ms. Gulley) So he just decided to switch?

2 MS. WEDGWORTH: Objection.

3 A. So he decided to switch. And, you know, Mr. H.
4 had promised me -- he said, "Bob, I promise you that I
5 will never, ever let the decision of this magnitude go
6 by without me personally being involved."

7 And I said, "Rick, you really need to do
8 that."

9 Q. (By Ms. Gulley) Did he promise he'll stay with
10 you?

11 MS. WEDGWORTH: Objection.

12 A. Well, he signed a five-year contract, and he
13 has almost doubled their billing with additional stuff
14 that they bought. They bought over 400 docuPADs.

15 Q. (By Ms. Gulley) Let's talk about docuPAD for a
16 minute. Does every Reynolds dealer have a docuPAD?

17 MS. WEDGWORTH: Objection.

18 MR. NEMELKA: Objection.

19 A. No. That -- That's our goal, but I mean --
20 we've not yet achieved that.

21 Q. (By Ms. Gulley) Now, if dealer -- if a dealer
22 wanted to use docuPAD with another DMS, would you
23 consider that?

24 MS. WEDGWORTH: Objection.

25 A. There -- there's technical issues that just

1 prohibit that. You know, there's -- one of the -- one
2 of the magic screens in -- in docuPAD is a screen
3 where -- will be displayed of some add-on.

4 You know, for instance, like an extended
5 warning for, you know, repair. There will be a
6 good/better/best -- that kind of choice and -- and the
7 consumer, with their -- with their stylus on their side
8 of the table actually checks which one they want, and
9 they will instantly display what their payment is in the
10 corner.

11 And then they can -- they can tap on the
12 "Better Policy," and it will change the payment for
13 them. And then it will check -- they'll tap on the
14 "Best Policy" and it will give them what the payment is.
15 And they can choose which one they want or none.

16 They can -- they -- go back and click on
17 the "None" button, and it will (verbally indicating) --
18 it will keep on changing, you know, the payment.

19 Well, how does he get that done? What it
20 does is -- is it -- it is built right into the Reynolds
21 F&I system. And, you know, therefore, we can't -- we'd
22 like to consider selling it to, you know, non-Reynolds
23 customers, but we can't from a technical standpoint. It
24 would just -- the rework would be just huge.

25 Q. (By Ms. Gulley) Also in talking about docuPAD

1 with Ms. Wedgworth, you used a number of terms like
2 "profit producer" or "revenue generator." Do you
3 remember that discussion?

4 A. Yes.

5 MS. WEDGWORTH: Objection.

6 Q. (By Ms. Gulley) You called it "sticky," right?

7 MS. WEDGWORTH: Objection.

8 A. Yeah, it is -- it is so compelling from a money
9 standpoint that we think that dealers will stick with it
10 simply because it would make economic -- you know, it
11 wouldn't be sensible to change.

12 Q. (By Ms. Gulley) So I think the -- so the
13 record is clear -- it's not entirely clear in the
14 record, who you're talking about. Who is making all of
15 this revenue? Who is generating all of this -- who's
16 producing all of this profit?

17 MS. WEDGWORTH: Objection.

18 A. The dealer is. And -- and it's occurring
19 because of what, you know, what I think is nigh onto a
20 miracle. Because I -- I -- in the original conception,
21 I never dreamed it would do it.

22 What happens is -- and that's that the
23 finance and insurance part of the business is typically
24 called a "business office." And, you know, the part of
25 the sales process of buying a car -- where it occurs is

1 after you've decided what car that you want. It's after
2 you've decided what kind of financing, it's after you've
3 decided on what trade-in value you're going to have.
4 All that's done and everybody kind of shakes hands on
5 the deal.

6 And then, after a little bit, you're sent
7 to the business office to finalize the paperwork. Okay?
8 That's where there's this final attempt to sell you
9 things. And it's all kinds of things. It's extended
10 warranties. It is tire and wheel protection. It's, you
11 know, electronic key, locks. It's -- it's windshield
12 cracks. It is what they call "rust and dust," which is,
13 you know -- it's fabric protectant inside. It used to
14 be undercoating, but nobody undercoats anymore.

15 But it -- it's a very, very essential
16 profit center for the dealership. Unfortunately, it is
17 ranked very, very high in customer dissatisfaction. And
18 people who have been through the process are warned that
19 what you do is you cross your arms like this
20 (indicating) when you go in there, and the answer to
21 everything they say is, "No." "No." "No." "No." And
22 you do that long enough, they'll finally let you loose
23 and you can go away with your new car.

24 What happens in the docuPAD situation is we
25 completely changed that whole process. Instead, you

1 know, the consumer comes in, they sit on their side of
2 the table, and there's this big flat screen that's about
3 so high (indicating) and the whole transaction is --
4 takes place there. And the customer is given a stylus,
5 and they basically -- it's a menu system. They get to
6 pick the stuff off the menu that they want.

7 And the miracle is that they buy more
8 because they don't hate the process. They're -- they're
9 so completely disarmed, you know, they -- they go from
10 this posture here, saying -- telling them, "No." "No."
11 "No." Instead, they get handed a stylus, and say --
12 "You" -- "You run the system. You make your choices."

13 And that amounts to, typically, 200 bucks
14 per transaction more gross profit to the dealer. So if
15 you have a -- a typical finance manager who will handle
16 70 transactions a month at 200 bucks apiece, that's
17 \$14,000 a month in additional gross profit -- per F&I
18 managers. If you've got five, then it's five times that
19 a month.

20 Q. (By Ms. Gulley) Is that more than the -- what
21 they're paying to license the DMS, the whole DMS?

22 A. Correct.

23 MR. NEMELKA: Objection.

24 A. We have customers that will stand up and swear,
25 and take calls, you know, and go visit -- that that's

1 what it does. It's that good. It's one of those
2 situations where -- I've been in this business a long
3 time, and my daily prayer is, "Oh, Lord, please give me
4 one more killer ap." And he gave it to me. I -- I
5 didn't -- I didn't invent it. I can't take credit for
6 that. But I saw it, and I said, "God, we've got to have
7 this."

8 Q. (By Ms. Gulley) All right. Let's switch gears
9 a little bit. Mr. Nemelka just shortly -- this
10 afternoon, put in front of you an email between you and
11 Mr. Anenen. Do you remember that?

12 A. Uh-huh. (Witness answers affirmatively.)

13 Q. How do you feel about CDK/ADP?

14 MS. WEDGWORTH: Objection.

15 MR. NEMELKA: Objection.

16 A. Well, that is -- that is a -- a complex
17 question. There's individual people inside CDK that are
18 decent people. Ron Workman was a decent person. I
19 mean, Steve Anenen is a decent person. Corporately,
20 they're -- I don't have good feelings about them at all,
21 and it goes back to many, many, many years ago. I've
22 been competing against them directly in the marketplace
23 for well in excess of 40 years. And, you know, they did
24 some things, you know, back early on that I'm still mad
25 about.

1 Q. (By Ms. Gulley) Are we talking '70s, the
2 1970s?

3 MS. WEDGWORTH: Objection.

4 A. 1970s. 1970s. I have very, very bad
5 experience with them, and I'm, you know, still bent out
6 of shape about that.

7 And then about -- about 20 years ago, there
8 was a small company in Houston that, you know, copied
9 our system and built a new one based upon -- they --
10 they stole our -- our screen layouts, our report
11 layouts, our -- our field -- our field layouts, our data
12 fields inside the field -- inside the -- inside the
13 records, and sold it to, you know, ADP for \$67 million.
14 And for some reason -- or a reason we don't know, ADP
15 decided to hold back \$27 million out of that
16 transaction. For some reason.

17 We sued ADP as a result, and I wasted a
18 year in depositions, arbitration and whatnot. You know,
19 finally lost. I'm still amazed that I did. But in
20 my -- I was dispirited about that. But the Lord decided
21 that he will help me.

22 And it went like this: After ADP won, they
23 put in -- they ran a whole floor in a big office
24 building out of Westmark in Houston. And they hired
25 about 150 programmers. This was going to be the next

1 generation system. They told their sales force all
2 about the next generation system. And they worked at it
3 and they worked at it and they worked at it, and it all
4 looked great, and it would run four terminals well.
5 Four. You put 20 on it, it wouldn't work at all. And
6 they could not scale it up.

7 But they worked -- they didn't stop
8 working. They said, "Well, we can fix this. We can do
9 this." And they worked and they worked and they worked
10 and they worked, and finally, five years after their --
11 their, quote, "victory" over Bob Brockman, they scrapped
12 the whole thing.

13 And as close as I can estimate that cost
14 them, including the original purchase price, plus the
15 legal fees for fighting me off, it cost them \$250
16 million and cost them five years in market, because all
17 of a sudden, they had to start over on what their next
18 generation piece of software was going to be.

19 So obviously, I have a lot of very, very
20 strong feelings about it -- about ADP or CDK. I don't
21 like them, and I don't like them a lot.

22 Q. (By Ms. Gulley) Do you want help them make
23 more profits?

24 MS. WEDGWORTH: Objection.

25 MR. NEMELKA: Objection.

1 A. Only if -- if I make more profit, you know,
2 right alongside them.

3 Q. (By Ms. Gulley) Well, in this case, the
4 plaintiffs have alleged that you and CDK have gotten
5 together in some sort of conspiracy. I want to kind of
6 talk through some of that. Are you the leader of
7 Reynolds and Reynolds?

8 MS. WEDGWORTH: Objection.

9 A. Unequivocally.

10 Q. (By Ms. Gulley) When did you learn that CDK
11 was going to require vendors to access its system
12 through the 3PA program rather than any other method?

13 MS. WEDGWORTH: Objection.

14 A. I don't know the exact day, but it was
15 substantially after the stand-down agreement.

16 Q. (By Ms. Gulley) So it was after February 2015?

17 A. Yes.

18 MS. WEDGWORTH: Objection.

19 Q. (By Ms. Gulley) Did you personally agree with
20 anyone at CDK that you would get together to block
21 Authenticom?

22 MS. WEDGWORTH: Objection.

23 MR. NEMELKA: Objection.

24 A. Did not.

25 Q. (By Ms. Gulley) That you would get together to

1 block anyone in Authenticom's business line?

2 MS. WEDGWORTH: Objection.

3 A. No. Did not.

4 Q. (By Ms. Gulley) Did you personally agree with
5 anyone at CDK that you would destroy Authenticom
6 together?

7 MS. WEDGWORTH: Objection.

8 A. Absolutely not.

9 Q. (By Ms. Gulley) Have you ever discussed CDK's
10 policies about system access to their DMS with CDK?

11 MS. WEDGWORTH: Objection.

12 A. I have not.

13 Q. (By Ms. Gulley) Are you aware of any agreement
14 between anyone at Reynolds and CDK to eliminate
15 third-party data brokers, like Authenticom?

16 MS. WEDGWORTH: Objection.

17 A. I have not.

18 Q. (By Ms. Gulley) Did you and CDK ever meet to
19 even discuss the two firm's data access policies?

20 MS. WEDGWORTH: Objection.

21 A. We have not.

22 Q. (By Ms. Gulley) Are you aware of anyone having
23 those kind of conversations with CDK?

24 A. No.

25 MS. WEDGWORTH: Objection.

1 A. I -- I didn't come to understand their data
2 access policy, really, until we bought ReverseRisk,
3 which is -- which was a customer. They -- they acquired
4 data downloads for accounting data from CDK, and it
5 wasn't until that time that I understood, even, how it
6 all worked.

7 Q. (By Ms. Gulley) These -- in terms of an
8 agreement between Reynolds and CDK related to companies
9 like Authenticom, if there was any such agreement about
10 how the two firms were going to jointly treat somebody
11 like Authenticom, would you know about it?

12 MS. WEDGWORTH: Objection.

13 A. Absolutely. As you probably can tell, I'm --
14 I'm into the details, big time. And there's no way in
15 the world anything like that would happen without my --
16 without my knowledge.

17 Q. (By Ms. Gulley) What about any agreement
18 between Reynolds and CDK related to the two firms' data
19 access policies? If there were any agreement like that,
20 would you know about it?

21 A. Absolutely.

22 MS. WEDGWORTH: Objection.

23 A. Absolutely.

24 Q. (By Ms. Gulley) Did you enter into an
25 agreement with CDK to create a market where Reynolds

1 controlled all of the access to data stored on a
2 Reynolds DMS and CDK would control all of the access to
3 data stored on CDK's DMS?

4 MS. WEDGWORTH: Objection.

5 A. I did not.

6 Q. (By Ms. Gulley) Are you aware of any such
7 agreement?

8 MS. WEDGWORTH: Objection.

9 A. There is no -- there is no such agreement.

10 Q. (By Ms. Gulley) As soon as we find it, I'll
11 hand you Exhibit 644, from plaintiffs, earlier marked.
12 It's notes from a sales meeting in Aspen. Ms. Wedgworth
13 had asked you some questions about this. I'd like to
14 direct you to the page ending 632. I -- I don't
15 actually know if it was Ms. Wedgworth or Mr. Nemelka as
16 I sit here, but do you recall looking at this document
17 before?

18 A. Yes, I do.

19 Q. And again, these are -- I believe you
20 testified, in sum and substance, that these are your
21 notes in preparation of speaking to the top salespersons
22 at Reynolds in --

23 MS. WEDGWORTH: Objection.

24 Q. (By Ms. Gulley) -- July 2014.

25 MS. WEDGWORTH: Objection.

1 A. Yes, it would be the sales VPs.

2 Q. (By Ms. Gulley) And how many sales VPs are
3 there?

4 MS. WEDGWORTH: Objection.

5 A. All total, like, 12.

6 Q. (By Ms. Gulley) All right. There's a line
7 here -- Bullet 1, 2, 3, 4 -- Bullet 4, "This could put
8 the security wars very much behind us." Do you see
9 that?

10 MS. WEDGWORTH: Objection.

11 A. Is this 632?

12 Q. (By Ms. Gulley) 632. Do you see where it says
13 "Security" at the bottom?

14 A. Okay.

15 Q. And then there's a number of bullet points.
16 I'm looking at the penultimate -- the second from the
17 bottom. "This could put the security wars very much
18 behind us." Do you see where I am?

19 MS. WEDGWORTH: Objection.

20 A. Yes.

21 Q. (By Ms. Gulley) You were asked a lot about
22 this section in earlier questioning. I'd like you to
23 explain what you meant by "security wars" in this
24 document.

25 MS. WEDGWORTH: Objection.

1 MR. NEMELKA: Objection.

2 A. The subject of data security, when it comes to
3 third-party data brokers, hackers, whatever you want to
4 call them, has been, over the years, very much a
5 cat-and-mouse kind of situation where we will detect a
6 method by which somebody is getting into the system.
7 And we will devise a countermeasure. And that will
8 cause them to be unable to get into the system for a
9 while.

10 And then they -- they're -- they're not --
11 you know, dummies. What they'll do is they'll figure
12 out a different way. And that will work for a while,
13 and we will, ultimately, observe that one, and we'll
14 then go about employing countermeasures.

15 Now, what that is -- is that -- that's --
16 that's kind of a seesaw, you know, kind of back and
17 forth like a war. And that's where the inference comes
18 from. There's not a -- a -- we don't have a declaration
19 of war per se. You know, we don't have a -- a, quote,
20 "War room" with a capital W, that sort of thing. It --
21 it's a figure of speech. And it applies to this, you
22 know, back and forth nature of -- of data security
23 and -- and its countermeasures.

24 Q. (By Ms. Gulley) So -- so the security war was
25 with DMI and Integra Link!! and Authenticom and SIS,

1 those folks? Or something else?

2 MS. WEDGWORTH: Objection.

3 MR. NEMELKA: Objection.

4 A. Probably, you know, Phil Bautista was -- was
5 one of the early and one of the worst ones. And is
6 still -- he's still regrowing his fangs.

7 MS. GULLEY: I thank you for your time. I
8 have nothing further. I believe the plaintiffs have a
9 few minutes left.

10 FURTHER EXAMINATION

11 BY MR. NEMELKA:

12 Q. Mr. Brockman, you testified about an -- an
13 Xtime incident, and I have a question about that. The
14 Xtime incident happened through the RCI interface, not
15 because of any data integrator; correct?

16 MS. GULLEY: Form.

17 A. That's correct.

18 Q. (By Mr. Nemelka) So your answers with respect
19 to the Xtime incident have nothing to do with use of
20 data innovators, right?

21 MS. GULLEY: Form.

22 A. That particular situation, yeah, did not
23 involve data integrator. Come, however, any data
24 integrator that employed any kind of write-back
25 strategy, you know, could, potentially, the same thing

1 happen.

2 Q. (By Mr. Nemelka) All right. And then
3 Ms. Gulley put a document in front of you with your son
4 about the DealerBuilt situation. The DealerBuilt
5 situation also had nothing to do with dealers using data
6 integrators, right?

7 A. That's correct.

8 Q. And so you wrote your son, "It finally
9 happened." It had nothing -- but that had nothing to do
10 with Data Integrators, right?

11 MS. GULLEY: Objection; form.

12 A. It has to do with a data breach situation,
13 which is a very distinct possibility with a data
14 integrator.

15 Q. (By Mr. Nemelka) But that incident with
16 DealerBuilt had nothing to do with a data integrator,
17 right?

18 MS. GULLEY: Objection; form.

19 A. That particular incident did not have anything
20 to do with a data integrator.

21 Q. (By Mr. Nemelka) And still today, you haven't
22 -- you're not aware of any data breach caused by
23 Authenticom; correct?

24 MS. GULLEY: Objection; form.

25 A. That's come to my attention.

1 Q. (By Mr. Nemelka) You also testified about --
2 you estimated that you wouldn't be surprised -- I wrote
3 it down -- you wouldn't be surprised, you said, if the
4 number was 500 million with respect to what Reynolds had
5 spent with respect to security. Do you recall that
6 testimony?

7 MS. GULLEY: Billion. Not millions. He
8 said billion, not million.

9 MR. NEMELKA: 500 billion?

10 MS. GULLEY: Oh, I'm sorry. Half a
11 billion. I'm sorry, Counselor, it's late. I'm sorry,
12 Mike.

13 Q. (By Mr. Nemelka) You never actually calculated
14 that number, did you?

15 A. That's correct.

16 Q. Nobody in Reynolds actually calculated that
17 number, have they?

18 MS. GULLEY: Objection; form.

19 A. That's correct.

20 Q. (By Mr. Nemelka) There are no documents
21 reflecting that calculation, are there?

22 A. No.

23 MS. GULLEY: Form.

24 A. That's -- that's correct. I -- I'm making
25 that, you know, guesstimate based on my knowledge and

1 experience in the business.

2 Q. (By Mr. Nemelka) All right. That number is
3 just a guesstimate, right?

4 MS. GULLEY: Objection; form.

5 A. That's correct. But I think it's a pretty good
6 one.

7 Q. (By Mr. Nemelka) But it's still speculative,
8 right?

9 MS. GULLEY: Objection; form.

10 A. It's still speculative. But I would -- I would
11 add that I'm, you know, probably uniquely qualified to
12 be able to make that kind of guesstimate.

13 MR. NEMELKA: All right.

14 FURTHER EXAMINATION

15 BY MS. WEDGWORTH:

16 Q. Mr. Brockman, you stated earlier that the
17 exemptions are only for specific security policy. Do
18 you remember saying that when Ms. Gulley was asking you
19 questions?

20 A. Yes, I did.

21 Q. If you could look at -- at Exhibit 665 of
22 Plaintiff's. Here's 665. Mr. Brockman, this document,
23 halfway down the page, the top email, if you'll note, is
24 from Mr. Schaefer to you. Do you see that?

25 A. Yes.

1 Q. And the email which is dated May 8, 2016, you
2 might recall that dealt with security enhancements that
3 you wanted to implement and did implement that month.
4 Do you recall that?

5 MS. GULLEY: Form.

6 A. Excuse me. Let me read this again. Yes, I --
7 I've read this. I'm not sure that I understand it
8 completely, but --

9 Q. (By Ms. Wedgworth) So here, Mr. Schaefer asked
10 you, toward the bottom of the email, talking about the
11 new security enhancements to be implemented by Reynolds.
12 It states, "I am trying to understand if there will be
13 any exceptions? Which we have always had? For example,
14 PAG, Hendrick, AMSI, Rahal, Wyler, etc."

15 PAG and Hendrick, AMSI, Rahal and Wyler,
16 those are all dealerships; correct?

17 MS. GULLEY: Objection; form.

18 A. That's correct.

19 Q. (By Ms. Wedgworth) And they are large
20 dealerships, right?

21 A. Yes. They are some of the largest.

22 Q. And here, Mr. Schaefer says that those
23 dealerships have always had exemptions; is that correct?

24 MS. GULLEY: Form.

25 A. For certain, you know, PAG, Hendrick, AMSI, I'm

1 personally aware of always had some exceptions. These
2 are very large organizations, amongst the largest, and
3 have very extensive IT staffs of their own. And they're
4 what I would call quite sophisticated.

5 Rahal and Wyler are a little smaller, but
6 they still have -- not a large number of individuals,
7 but they have a small number of individuals that are
8 really, really savvy and know what they're doing.

9 And in those particular cases, we've always
10 allowed them, you know, some specific exceptions as far
11 as, you know, downloading of data and that sort of
12 thing.

13 MS. GULLEY: That's -- that's the end of
14 your time.

15 A. And what -- what --

16 Q. (By Ms. Wedgworth) Well --

17 A. What Bob Schaefer is doing and that's he wants
18 to know, you know, what kind of exception is -- is going
19 to be. And he's asking, he's saying, "Please advise."

20 Q. And he's saying, We have always had these
21 exceptions for these dealerships, correct?

22 A. The -- the --

23 MS. GULLEY: Objection; form.

24 A. -- for these, five dealerships, there's always
25 been some kind of exception. Without going back in to

1 the details, I can't tell you exactly what.

2 Q. (By Ms. Wedgworth) And in addition to --

3 MS. GULLEY: Peggy, that's the end of your
4 time.

5 MS. WEDGWORTH: I'm going to continue. You
6 took a long time, you went over a lot of topics. You
7 covered lots of -- a lot of topics.

8 MS. GULLEY: You had to reserve your time
9 for that. I'm sorry, Peggy. We're not going to
10 continue. I told you that there was a limit to how long
11 you could go. I just didn't cut him off when he was
12 answering.

13 MS. WEDGWORTH: Nor did I when I was
14 questioning him. So I -- I'm going to continue my
15 questioning.

16 MR. NEMELKA: We have two more minutes.
17 You're wrong about your calculation anyway, Andi.

18 Q. (By Ms. Wedgworth) So -- so other than the
19 five dealerships, there's also an "etc." at the end,
20 Mr. Brockman. Do you see that?

21 MS. GULLEY: Objection; form.

22 A. Yes, ma'am, I do.

23 Q. (By Ms. Wedgworth) And so that doesn't limit
24 it to just the five dealerships who always have
25 exemptions; is that correct?

1 MS. GULLEY: Objection; form.

2 A. Ma'am, I -- I don't know, you know, if there's
3 one more, or no more, or multiple that more. I can't
4 tell from looking at this. And, again, we -- I think
5 we've also talked about in the last two days about the
6 total number of exceptions that are out there and how
7 that number keeps coming down, down, down, down, down.
8 And we're not all the way there yet.

9 Q. (By Ms. Wedgworth) And the biggest drop of
10 those exemptions coming down --

11 MS. GULLEY: Objection.

12 Q. (By Ms. Wedgworth) -- came after the
13 stand-down agreement; correct?

14 A. That's correct.

15 Q. So if we now go to the first exhibit that you
16 -- that I used with you today -- and let's see if I can
17 find it.

18 MR. NEMELKA: I can try to find it for you.

19 MS. WEDGWORTH: Okay. It's the Ron Lamb
20 exhibit. But I -- I'll try to do it without looking for
21 the exhibit. It was the very first one today, which
22 would be 657.

23 Q. (By Ms. Wedgworth) But it's -- it's the letter
24 that Ms. Gulley referred you to that you reviewed, where
25 you said Mr. Lamb has written the letter and the first

1 half of it was brilliant?

2 MS. GULLEY: Object to everything you just
3 said.

4 MS. WEDGWORTH: Here's a copy of it for
5 you. 677.

6 MR. NEMELKA: I found it.

7 MS. WEDGWORTH: 657. There we go.

8 Q. (By Ms. Wedgworth) Mr. Brockman, do you recall
9 this document?

10 A. Yes, ma'am.

11 Q. So on the second page, those dealerships that
12 are listed there, those are all privately held
13 dealerships, correct --

14 MS. GULLEY: Objection; form.

15 Q. (By Ms. Wedgworth) -- in that box, in the
16 chart?

17 MS. GULLEY: Form.

18 Q. (By Ms. Wedgworth) Second page.

19 MS. GULLEY: Form.

20 A. And what -- what is your question again,
21 please, ma'am?

22 Q. (By Ms. Wedgworth) The dealerships listed in
23 the chart are all privately held dealerships; is that
24 right?

25 MS. GULLEY: Form.

1 A. Ma'am, I -- I don't know that. I -- I --
2 there's some of them -- Herb Chambers, I'm -- I'm
3 familiar with. And I'm pretty sure that one is
4 privately owned. The status of the rest of them, I --
5 I'm unaware.

6 Q. (By Ms. Wedgworth) Well, do you have -- do you
7 have any knowledge that any of those others are publicly
8 held companies?

9 A. Ma'am, I'm -- I'm sorry. I -- I just don't
10 know.

11 Q. Okay. With regard to this letter, I think you
12 answered some questions from Ms. Gulley. You -- do you
13 stand by this letter as Mr. Ron Lamb wrote it and you
14 edited it?

15 MS. GULLEY: Objection; form.

16 A. Yeah, I acknowledge the fact that he wrote it.
17 This is a sales letter. And I looked at it from a
18 topical standpoint. As I think I remember stating, I
19 was very pleased that there were no misspellings, and
20 punctuation also looked pretty good. But as far as
21 the -- the exact, you know, last, you know, comment in
22 the paragraph, I did not read it for that -- that level
23 of content.

24 Q. (By Ms. Wedgworth) Well, when you say it's a
25 sales letter --

1 MS. GULLEY: Ms. Wedgworth, we're way
2 beyond your time. You can finish the -- you are way
3 beyond your time. For the record, we have asked
4 questions of all of our witnesses. You just did not
5 reserve enough.

6 MS. WEDGWORTH: Well, I'm going to -- I'm
7 going to keep this deposition open for many reasons.
8 The least of which is that we -- we let him answer every
9 single question. We let him take as long as we want.
10 You've asked a lot of questions. He's given very long
11 answers and we're entitled to respond to all of that.
12 In addition, you produced over 2,000 -- 200,000
13 documents --

14 MR. NEMELKA: Pages of documents.

15 MS. WEDGWORTH: -- pages of documents over
16 the weekend. And for all those reasons, we are going
17 to --

18 MS. GULLEY: You knew that those documents
19 were coming in advance, because we --

20 MS. WEDGWORTH: Actually, we did not. And
21 we certainly didn't see them coming in on Friday night.

22 MS. GULLEY: You compelled them and the
23 court ruled that they would be produced after the motion
24 to compel. As you know, we're all still producing
25 documents in response to the Court's ruling on the

1 motion to compel. You put these depositions on the
2 docket in -- in any event. That's our entire point, is
3 why plaintiffs are so far ahead of us on the number of
4 depositions, because plaintiffs do not produce
5 documents. And we understand that we can only take
6 depositions once.

7 We are not holding the deposition open
8 longer. You have used the entire seven hours. We split
9 this over two days, not to give you a one-and-a-half day
10 deposition, but rather because of health -- of attorney
11 eyes only -- as we said before -- health considerations
12 that mean Mr. Brockman really cannot be here any longer.

13 And therefore, this deposition is not going
14 to stay here open. I was actually going to tell you we
15 were out of time; if you would like to finish this
16 series of questions for the next two or three minutes,
17 that's fine, until you jumped down my throat and said
18 you're not going to close it at all. That's nonsense.
19 That's -- we have an agreed protocol order.

20 MS. WEDGWORTH: Well, I am not agreeing to
21 it, and I will be making a motion to the court to finish
22 this deposition.

23 MS. GULLEY: How much longer do you need,
24 Ms. Wedgworth?

25 MS. WEDGWORTH: I'm not sure. It's

1 depending on his answers.

2 MS. GULLEY: What are you going to ask the
3 court for, an unlimited deposition?

4 MS. WEDGWORTH: Nope. Not unlimited at
5 all. I would think at least an hour could cover all of
6 this.

7 MS. GULLEY: Well, I believe that we need
8 to go off the record. You're asking me before we go off
9 the record for an extension of one hour. Otherwise,
10 you're filing a motion to just to be clear on the
11 record, for the future.

12 MS. WEDGWORTH: Correct. Correct.

13 MS. GULLEY: And you'll be asking the Court
14 for one hour, additional?

15 MS. WEDGWORTH: Certainly one hour, yes.

16 MS. GULLEY: Okay. Off the record.

17 THE VIDEOGRAPHER: Off the record at 4:20
18 p.m.

19 (Short recess 4:20 to 4:42 p.m.)

20 THE VIDEOGRAPHER: Back on the record at
21 4:42 p.m.

22 MS. GULLEY: While we were off the record,
23 there was discussion back and forth among counsel about
24 next steps. Counsel for plaintiffs approached me and
25 said, you know, if we could go ten more minutes, they

1 would, you know, withdraw their objection to keep the
2 deposition open. We were agreeable to that extra ten
3 minutes, and we're willing to put Mr. Brockman on the
4 stand for an extra ten minutes.

5 However, during that time period, he
6 suffered an incident with his health, verified by a
7 test. And unfortunately, he's unable to come back into
8 the room to proceed for those ten minutes. My
9 understanding is that plaintiffs are okay closing the
10 deposition for today, subject to your statements.

11 MS. WEDGWORTH: We just reserve our rights
12 to pursue whatever we may need in the future. And we
13 certainly appreciate that his health is paramount and
14 don't feel it appropriate. If the -- if he can't
15 testify today, it wouldn't be appropriate to do it
16 today, due to his health.

17 MR. NEMELKA: And I have no further
18 questions.

19 MS. GULLEY: No, just in response to
20 Ms. Wedgworth, obviously, Mr. Brockman is the chairman
21 of the company, and he made himself available for the
22 entire seven hours. We would object to keeping the
23 deposition open in any way. I understand we've agreed
24 to disagree on that point.

25 MS. WEDGWORTH: Off the record.

1 THE VIDEOGRAPHER: This will conclude
2 today's deposition for Mr. Robert Brockman. We are off
3 the record at 4:43 p.m.

4 (Deposition concluded at 4:43 p.m.)
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CHANGES AND SIGNATURE

WITNESS NAME: ROBERT BROCKMAN DATE: January 17, 2019

PAGE LINE CHANGE REASON

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I, ROBERT BROCKMAN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

ROBERT BROCKMAN

THE STATE OF)
COUNTY OF)

BEFORE ME, _____, on this day personally appeared ROBERT BROCKMAN, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4))
5 IN RE: DEALER MANAGEMENT) MDL NO. 2817
6 SYSTEMS ANTITRUST)
7 LITIGATION,) CASE NO. 18 C 864
8))

9 REPORTER'S CERTIFICATION
10 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT BROCKMAN
11 January 17, 2019
12 Volume 2

13 I, SHAUNA L. BEACH, Certified Shorthand
14 Reporter in and for the State of Texas, do hereby
15 certify to the following:

16 That the witness, ROBERT BROCKMAN, was duly
17 sworn by the officer and that the transcript of the oral
18 deposition is a true record of the testimony given by
19 the witness;

20 I further certify that pursuant to FRCP Rule
21 30(e)(1) that the signature of the deponent:

22 X was requested by the deponent or a party
23 before the completion of the deposition and is to be
24 returned within 30 days from the date of receipt of the
25 transcript. If returned, the attached Changes and

1 Signature Page contains any changes and the reasons
2 therefor;

3 ____ was not requested by the deponent or a
4 party before the completion of the deposition.

5 I further certify that I am neither counsel
6 for, related to, nor employed by any of the parties or
7 attorneys to the action in which this proceeding was
8 taken. Further, I am not a relative or employee of any
9 attorney of record in this cause, nor am I financially
10 or otherwise interested in the outcome of the action.

11 Subscribed and sworn to on this
12 30th Day of January , 2019.

13
14
15 

16 _____
17 SHAUNA L. BEACH, RDR, CRR, CSR #8408

18 Expiration Date: 12/31/2019
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[& - 24]

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[correct - customers]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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